369

SUPREME COURT OF THE UNITED STATES.

No. 147.

GEORGE BONDIES, LATE MASTER AND PART OWNER OF THE STEAMBOAT KATE, INTERVENING, &c., APP'T,

vs.

JAMES P. SHERWOOD, JOSEPH McCLELLAND, & BARNEY McGINNIS, LIBELLANTS.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Libel	1	3
A.	7	6
B.	10	8
Stipulation bond	12	10
Attachment	13	10
Monition	14	11
Claim and answer	16	12
Exhibit A	24	17
do. B	26	18
do. C	31	22
do. D	43	31
Two orders	44	32
Notice	45	33
Master's report	46	33
A	47	34
B	48	35
A	49	36
B	51	37
C	53	39

	Original.	Print.
Exceptions—decree	55	40
Motion for new trial	58	42
Order of court	59	43
Order of court	60	43
Statement of proceedings	60	43
Portion of answer read in evidence	61	44
Testimony of McPherson	62	44
" " Thomas Corregan	64	46
" " John F. Brannon	73	51
Deposition of Washington Stubbs	74	51
" " Charles Baxter	88	60
" " Daniel McCollum	94	63
" " William F. Heeder	97	64
2 releases	106	70
Deposition of Theodore F. Rohte	107	71
Unexecuted contract	112	73
Deposition of David E. Connor	113	74
Appeal	117	77
Appeal bond	120	78
Certificate and seal	121	80
Stip'n of counsel	122	80

THE UNITED STATES OF AMERICA,
District Court of the United States,
Eastern District of Texas at Galveston, to wit:

At a term of the District Court of the United States for the Eastern District of Texas, begun and held at the City of Galveston, within and for said District, on the first Monday of May, in the year of our Lord one thousand eight hundred and fifty-seven, present the Honorable John C. Watrous, Judge of said Court, Ben. McCulloch, Esq., United States Marshal, Samuel D. Hay, Esquire, United States Attorney, and James Love, Clerk, among other were the following proceedings, to wit:

No. 70.

JAMES P. SHERWOOD, JOSEPH MCCLELLAND, and BARNEY MCGINNIS
vs.
THE STEAMBOAT KATE, her tackle, apparel, furniture, engines, and machinery, GEORGE BONDIES, Claimant.

In Admiralty.

Be it remembered, that heretofore, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, came James P. Sherwood, Joseph McClelland, and Barney McGinnis, and filed their libel herein, which said libel is in the words and figures following, that is to say:

Libel.

THE UNITED STATES OF AMERICA,
District of Texas.

To the Honorable John C. Watrous, Judge of the District Court of the United States, for the District of Texas. The libel and complaint of James P. Sherwood, Joseph McClelland, and Barney McGinnis, of Galveston, in said District, ship carpenters, against The Steamboat Kate, whereof George Bondies late was master, her tackle, apparel, furniture, engines, and machinery, and all and singular the goods now or late laden on board of said steamboat, as hereinafter shown, and against said George Bondies, who is, or was during the time hereinafter mentioned, the owner of said steamboat, in a cause of salvage, civil and maritime, and thereupon libellants allege and articulately propound as follows:

First. That some time in the month of January or February, in the year A. D. 1856, the said steamboat Kate, of which said George Bondies was then master and owner, left the Port of Galveston in said District, for ports and places on the Trinity River in said Dis-

trict, with goods, wares, and merchandise, shipped on board of said boat for freight, and to be delivered to various persons at various places along said Trinity River, which goods, wares, and merchandise was shipped by and belonged to various individuals, and were of the value of twenty-six thousand dollars or thereabout. And said steamboat with said goods, wares and merchandise on board, and under the charge and command of said master, while going up said Trinity River on her destination aforesaid and in the month of February or March, 1856, was snagged and sunk in said river with said goods, wares and merchandise on board, and comprising her cargo, at or near the place called Morse's Bluff in Liberty county in this district and State of Texas, and where the water was about eighteen feet deep; and most of the cargo so sunk in said boat was insured, and after the sinking as aforesaid, said cargo was abandoned by the owners to the insurers as a total loss.

Second. That on the 24th day of April, 1856, said Bondies entered into a written agreement with Libellants for the raising of said boat from her sunken condition, and the saving of her said cargo—a copy of which said agreement is hereto annexed marked [A] and made a part of this libel—and Libellants say that they would have succeeded in raising said boat and saving said cargo, according to and within the provisions of said agreement but for the interference of said Bondies, who retarded their work and caused the breakage of ropes and purchases with which Libellants had raised the stern of the boat, and said Bondies thereby caused said boat to sink back again to the bottom of the river, and high water in the river soon after setting in, said agreement was mutually given up and abandoned by the parties thereto.

Third. That after the abandonment of the aforesaid agreement by the parties thereto as aforesaid, and on or about the first day of July, 1856, the said George Bondies entered into a new and verbal agreement or contract with Libellants to raise said steamboat and cargo, and for the saving of the same, without any fixed price for such service, and the entire charge, control and management of raising and saving said boat and cargo, was by said Bondies, and at his special instance and request, entrusted and given to Libellants; and thereupon Libellants hired a large number of men, and bought provisions, and furnished the necessary vessels and tackle, and commenced the work of raising said steamboat and cargo, and on or about the 16th day of July, 1856, succeeded in raising said boat and pumping the water out of her, and stopping the leaks and getting her machinery and cargo on shore, and preserving, drying and repairing the same. And at the request of said Bondies, after said boat was cleaned of mud, and the cargo properly dried, Libellants were to put the saved cargo and machinery on board of said boat, and proceed with the same to said port of Galveston, where the said Libellants were to be paid for their services, whatever the said salvage services were reasonably worth. Libellants say that at the time said boat was raised

by them, there was about three feet of mud on her deck, and her hold was nearly full of mud, of all of which she was cleaned by the Libellants and her cargo taken ashore, and properly dried and cared for, and the leaks in said boat properly stopped, after which the Libellants started for Galveston, leaving the persons in their employ to keep charge, and have the care of said boat and cargo for Libellants, with directions when the boat was dry, to have her machinery, and the said saved cargo, then on shore, taken on board the boat, and all things put in readiness to proceed to Galveston with the same on the return of Libellants, which was intended to be in a short time. That after Libellants left for Galveston said Bondies took possession of said boat, saved cargo and machinery, by force or fraudulently, from the persons employed by Libellants, and by them left in charge of the same as aforesaid, and wrongfully and in utter disregard of the rights of Libellants kept possession thereof, and has ever since held and kept Libellants out of the possession thereof, and has refused to pay Libellants anything for their said services and expenditures, an account of which said services and money paid and expended by Libellants, in saving said boat, machinery and cargo, is herewith filed marked [B.] and amounting to the sum of three thousand two hundred and thirty-six $\frac{20}{100}$ dollars. That said Bondies has without any right, law or authority sold the said cargo of said boat, so saved by Libellants as aforesaid, and has appropriated the money arising from said sale to his own use and account, for the purpose of preventing Libellants from obtaining just compensation for their said salvage service.

Fourth. That without the assistance of said libellants, and persons employed by them as hereinbefore shown, the steamboat Kate, her tackle, apparel, furniture, machinery, engines, and cargo, could not have been saved, for that she had been sunk for the time aforesaid, and was heavily loaded with mud, both in her hold and on deck, and was fast going to decay, and no other persons could be obtained who would attempt to raise said boat and cargo, and unless libellants had raised and saved said boat and cargo, the same would have been totally lost; and that the value of said steamboat, her tackle, apparel, furniture, engines, machinery, and cargo, as saved, is about fifteen thousand dollars.

Fifth. That the libellants, by reason of the risks and hazards that they run, and the services they performed in raising said steamboat, &c. and her cargo, deserve, and they are justly entitled to receive, meet and competent salvage compensation, and to so much as has been and is usually allotted by this court and other courts of like jurisdiction, to other persons doing and performing like service, together with all charges and expenses attending the same.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and this Hon. Court; and said steamboat is now in said District of Texas.

Wherefore libellants pray that process in due form of law, accord-

ing to the course of courts of admiralty, and of this Hon. Court in causes of admiralty and maritime jurisdiction, may issue against the steamboat Kate, her tackle, apparel, furniture, engines and machinery, wheresoever the same may be found, and against said George Bondies, and that all persons having, or pretending to have any interest in said steamboat, &c. and said cargo; and also said Bondies may be cited to appear and answer all and singular the matters so articulately propounded, and that this Hon. Court would be pleased to decree such a sum of money, or proportion of the value of said steamboat, &c., and her said cargo to be due to libellants, as a compensation for their said salvage services, as shall seem meet and reasonable, together with their expenses in this behalf sustained, and to compel said Bondies to pay into Court the full value of all said cargo so saved by libellants, and disposed of by said Bondies as aforesaid, and to condemn said steamboat, her tackle, &c., for the payment of such salvage, and also condemn said Bondies, and all persons intervening herein, in costs; and that this Hon. Court would otherwise right and justice administer in the premises, and grant libellants such other or further relief as their cases may require.

J. F. C. McCLELLAND,
JAMES P. SHERWOOD,
BARNEY McGINNIS.

Sworn to before me on this fifteenth day of November, A. D. 1856, by libellants.

JOHN C. WATROUS,
U. S. Judge.

F. H. MERRIMAN, and
M. M. POTTER,
Proctors for Libellants.

DISTRICT OF TEXAS, *ss:*

The Clerk of the District Court of the United States for the District of Texas, at Galveston, will issue process of seizure on the foregoing libel against the steamboat Kate, her tackle, apparel, furniture, engines, and machinery. Also monition will be issued and published in some newspaper published in the city of Galveston. Also process of simple citation against the defendant George Bondies, on the libellants giving stipulation for costs in the sum of one hundred dollars; all process to be returnable to the first Monday in January, 1857.

JOHN C. WATROUS.

Nov. 15th, 1856.

A.

This agreement, made and entered into this 24th day of April, A. D. 1856, by and between Joseph McClelland, Barney McGinnis,

and James P. Sherwood, all of the county of Galveston, in the State of Texas, of the first part, and George Bondies, for the owners of the steamboat called the Kate, and for the underwriters of the second part, witnesseth :—

Said party of the first part covenant and agree to with the said party of the second part, that said McClelland and McGinnis shall proceed with all possible dispatch, accompanied by six competent and able-bodied men, and all necessary vessels, boats, and apparatuses usually used in raising sunken vessels, to where the said steamboat Kate is now lying sunk in the Trinity River, near Morse's Bluff; and upon their arrival at said point, shall forthwith proceed to raise said steamboat, and to secure and recover her cargo now laden in said boat, together with the tackle, apparel, furniture, and rigging belonging to said steamboat—said party of the first part binds itself to start with the necessary apparatus, vessels, etc., to where the said steamboat is now lying sunk, within the space of six days from the date of this agreement and no later.

And the said party of the first part further covenant, promise, and agree to and with the said party of the second part, that they the said party of the first part, will, at their own proper cost and expense, pay and discharge all the expenses to be incurred in raising said vessel and saving her cargo, whether their efforts to raise said boat and save said cargo be successful or not, and that no part of said expenses to be incurred shall be chargeable against said steamboat or her owners, nor against her cargo or underwriters, nor against any other person or persons interested therein.

And the said party of the first part further covenant, promise, and agree to and with the said party of the second part, that in their efforts to raise said boat and her cargo, and to save her cargo, they will not unnecessarily injure said boat or destroy any part of her cargo, nor will they remove her machinery or cabins, or any other fixtures, rigging, or apparel belonging thereto, damages sustained to the present time, and unavoidable accidents alone excepted.

It is furthermore agreed between the parties mentioned that the said party of the first part obligate themselves to accomplish the raising of the said steamboat, and the saving of her cargo within the space of fourteen days from the day of their arrival at the place where said steamboat is now lying sunk, provided only they are not hindered to accomplish the same by high water only.

It is furthermore agreed between the parties that the said party of the first part, after having succeeded to raise said steamboat and to save her cargo, shall proceed with all possible and advisable speed to the port of Galveston, and the said party of the second part covenants and agrees to and with the said party of the first part, that if within thirty days after the arrival of said boat and cargo at Galveston, they the said party of the first part pay or cause to be paid to him the said party of the second part the sum of four thousand dollars in cash, and shall further pay all the expenses incurred by

said party of the second part from the time said steamboat sunk to the date hereof, and also pay all expenses incurred in raising said boat and saving her cargo, and bringing said boat and cargo to Galveston, then and in that event the said party of the second part will convey by good and absolute bill of sale and conveyance unto the said party of the first part, the said steamboat Kate free from the claim or claims of all persons, and will also subrogate said party of the first part to all his claims for salvage against the cargo thus saved and already saved, and all other benefits to accrue to him the said party of the second part, for his services in saving or causing to be saved, the cargo aforesaid.

It is further agreed between the parties to these presents that the legal possession of said steamboat and her cargo is not to pass out of the possession of said party of the second part, but that he reserves and retains full and complete possession thereof until the payment of the sum herein stipulated to be paid for said boat and cargo, be fully paid by said party of the first part.

For the faithful observance and performance of all and singular the covenants and agreements herein contained, the parties hereto subscribe their names and affix their seals, using scrolls in lieu of seals, this day and year first herein written.

Signed JOSEPH McCLELLAND, [L. S.]
BARNED McGINNEY, [L. S.]
JAMES P. SHERWOOD, [L. S.]
GEORGE BONDIES, [L. S.]

In presence of
E. NEIBEUR,
C. L. BEISSNER.

B.

Steamer Kate and owners
To McClelland & McGinnis, *Dr.*

1856.						
April 23.	To drayage,					25
	McClelland, use blocks and falls,	99 days,	@	8,	$792	
	Barney McGinnis,	10 "		5,	50	
	Jos. McClelland,	10 "		5,	50	
	John DeBois "Sloop"	13 "		1,	13	
	Peters "Boat,"	15 "		4,	15	
	Thompson,	13 "		2,	26	
	Portugee Joe,	15 "		2,	30	
	Charles Baxter,	20 "		2,	40	
25.	Drayage,				2	50
May 3.	Chubbs, use of blocks and falls,	89 days,	@	8,	$712	
12.	Provisions,				9	
13.	James Alcock,	12½ "		2,	25	
	John Elvan,	13 "		2,	26	

	Isaac,	13 days @	2,	26	
	Tom McCue,	13 "	2,	26	
	Barney McGinnis,	13 "	5,	65	
	Tom Shelten,	13 "	2,	26	
	Hashwell,	13 "	2,	26	
	Sloop Shelten,	13 "	5,	65	
	Joseph McClelland,	13 "	5,	65	
	Aaron,	13 "	2,	26	
June 7.	To provisions,			7	60
Do.	do.			7	95
25.	Bob Hines,	28 days @	2 50,	70	
July 23.	Tom McCue,	28 "	2 50,	70	
	Dan,	28 "	2 50,	70	
	Bill Calwell,	28 "	2 50,	70	
	McFarsen,	28 "	2 50,	70	
	Frank Bannum,	28 "	2 50,	70	
	Benj. Frank,	28 "	2 50,	70	
	Sloop Aliee,	28 "	5 00,	140	
	Amount carried forward,			2,761	30
	Amount brought forward,			2,761	30
	Barney McGinnis,	28 "	5 00,	140	00
	Jos. McClelland,	15 "	5 00,	75	00
	Provisions,			2	50
	Milk and vegetables,			5	00
	One yearling,			8	00
	Old Dan,	22½ "	2 00,	45	00
	Irish Jemmey,	22½ "	2 00,	45	00
	Use of chains,	99 "	1 00,	99	00
	John Spinks,	6 "	3 00,	18	00
	Brooks,	3½ "	3 00,	10	50
	Steve Hatchie,	4 "	3 00,	12	00
	Collins,	5 "	3 00,	15	00
	Spink's Bay,	6 "	3 00,	18	00
	Liberty County,	6 "	3 00,	18	00
	Spike's 3 bays, 6 d. ea.,	18 "	3 00,	54	00
				3,326	30
May 12.	By cash on account,			90	00
				$3,236	30

And on the same day and year, and accompanying the foregoing libel, the libellants filed their stipulation bond for costs herein, which said bond is in the words and figures, that is to say:—

Stipulation Bond.

DISTRICT COURT OF THE UNITED STATES,
for the District of Texas.

Whereas a libel hath been filed in this Court on the fifteenth day of November, in the year of our Lord one thousand and fifty-six, by James P. Sherwood, Joseph McClelland, and Barney McGinnis, against the steamboat Kate, whereof George Bondies late was master, her tackle, apparel, furniture, engines and machinery, and all and singular the goods now or late laden on board of said steamboat, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant.

Now therefore it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, be and the same are hereby bound in the sum of one hundred dollars, conditioned that the libellants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this Court, or upon an appeal by the Appellate Court.

J. F. C. McCLELLAND,
JAMES P. SHERWOOD,
BARNEY McGINNIS.

Taken and acknowledged this fifteenth day of November, A. D. 1856.

JOHN C. WATROUS.

And afterwards, to wit, on the same day and year, there issued from the clerk's office of our said Court a writ of seizure, in the words and figures following, to wit:—

Attachment.

THE UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America to the Marshal of the District of Texas, or any of his lawful deputies, greeting:—

Whereas a libel hath been this day filed in the District Court of the United States for the District of Texas, by James P. Sherwood, Joseph McClelland, and Barney McGinnis, against the steamboat Kate, &c., praying process, &c.

These are, therefore, to command you that you do seize, attach, and take into your possession the said steamboat, her tackle, apparel, furniture, engines and machinery, and all and singular the goods now or late laden on said steamboat, and the same safely keep, so that you have the same before this Honorable Court, then and there to abide the further order of this Court in the premises. Herein fail not.

Witness the Honorable John C. Watrous, Judge of said Court, and the seal of said Court. Done at the City of Galveston this fifteenth day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

[L. S.] JAMES LOVE,
Clerk.

And endorsed upon said writ is the return of the Marshal, in the words and figures following, that is to say:—

Marshal's Return.

Received Nov. 17th, 1856, and on the 13th day of December, 1856, I executed, per agreement, this writ, by taking the hull of the steamboat Kate, and all the machinery belonging to said boat, at the village of Wallisville, on the Trinity River.

BEN. McCULLOCH,
U. S. M.

By J. A. H. CLEVELAND,
Dept'y.

And afterwards, to wit, on the fifteenth day of December of the same year, there issued from the clerk's office of our said Court a writ of monition, in the words and figures following, to wit:—

Monition.

THE UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America to the Marshal of the District of Texas, or any of his lawful deputies, greeting:—

Whereas on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, a libel was filed in our District Court of the United States for the District of Texas by James P. Sherwood, Joseph McClelland, and Barney McGinnis, against the steamboat Kate, whereof George Bondies late was master, her tackle, apparel, furniture, engines and machinery, and against all persons lawfully intervening for their interest in said steamboat in a cause of salvage, civil and maritime, in the sum of three thousand two hundred and thirty-six dollars and thirty cents; and that all persons having or claiming to have any interest in said steamboat Kate, her tackle, apparel, furniture, engines and machinery, may be condemned to pay the amount so claimed as hereinbefore stated.

These are, therefore, to command you to seize and attach the said steamboat Kate, her tackle, apparel, furniture, engines and machinery, and detain the same in your custody until the further order of this honorable Court respecting the same; and give due notice to all persons claiming the said steamboat Kate, her tackle, apparel,

furniture, engines and machinery, or knowing or having anything to say why the said steamboat Kate, her tackle, apparel, furniture, engines and machinery should not be condemned, according to the prayer of the said libel, by publication in the "Galveston News," a newspaper published in the City of Galveston, for the term of fifteen days next preceding the return day, and by serving the said master with a copy of this monition, that they be and appear before the honorable the District Court of the United States for the District of Texas, on the first Monday, being the fifth day of the month of January next, at ten o'clock in the forenoon of that day, to make their allegations in this behalf. Herein fail not, and due return make of this writ, certifying how you have executed the same.

Witness the Honorable John C. Watrous, Judge of the District Court of the United States for the District of Texas, and the seal of said Court, at the City of Galveston, this fifteenth day of December, A. D. 1856, and of the Independence of the United States of America the eighty-first year.

[L. S.] JAMES LOVE,
Clerk.

And endorsed upon said writ is the return of the Marshal, in the words and figures following, to wit:—

Marshal's Return.

Received, Dec. 15th, 1856, and executed by making publication as herein directed, and by seizing and attaching the hull of steamer Kate, and all the machinery that could be found at Wallisville.

BEN. McCULLOCH,
U. S. M.

By J. A. H. CLEVELAND,
Deputy.

And afterwards, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-seven, came George Bondies, and filed his claim and answer herein, which are in the words and figures following, to wit:—

Claim and Answer.

DISTRICT COURT OF THE UNITED STATES,
for the District of Texas.

To the Hon. John C. Watrous, Judge of the District Court of the United States for the District of Texas. The answer and claim of George Bondies, of the County of Nacogdoches, late master and part owner of the steamboat Kate, intervening for the interest of himself and principals, and also intervening for himself as sole owner at present of said steamboat, her tackle, apparel, engines, and machinery,

to the libel of information of James P. Sherwood, Joseph McClelland, and Barney McGinnis, of Galveston, in said District, filed on the behalf of said libellants.

First. This respondent admits that the said steamboat Kate, at the time mentioned in said libel, or thereabouts, left the port of Galveston, in said District, for a trip up the Trinity River, and to ports and places thereon as mentioned in said libel. That she carried on board freight in goods, wares, and merchandise, as cargo, to be delivered at various ports and places on said river to various individuals, which said goods, wares, and merchandise, composing said cargo, were of the value of twenty thousand dollars or thereabouts, at the port of lading, to wit, Galveston aforesaid, and that nearly the entire amount of said cargo, if not the whole, was covered by insurance. That said boat on her passage up the Trinity River, on or about the last of March, or first of April, A. D. 1856, was snagged, and with her cargo sunk at or near Morse's Bluff, as mentioned in libel, and that said cargo was abandoned by the owners to the insurers and underwriters as a total loss. And this claimant admits, that at the time he was master of said boat, and that he was also one-half owner thereof, and alleges that Theodore F. Rhote was the other half owner of said boat; and also states that no insurance had been effected on said boat, her tackle, &c., at the time of the disaster aforesaid.

Second. The respondent alleges that after said boat and cargo had sunk as aforesaid this respondent proceeded to the port of Galveston and had a conference with the agents of the insurers and underwriters aforesaid. That upon such conference this respondent was authorized to act for and on behalf of said insurers and underwriters in protecting their interests as well as his own; and were also authorized by said Theodore F. Rhote, part owner as aforesaid, to act in his behalf in the protection of the interest of said Rhote as part owner of said boat, but such authority on the part of the underwriters and insurers, and of said Rhote, extended no further than to incur expenditures in raising said boat and cargo to the amount of their value on sale; or in other words, not to incur expenditures beyond the proceeds of the property saved from said boat and cargo.

Third. This respondent further alleges, that at the time said boat sunk she was of the value of seven thousand and five hundred dollars or thereabouts. That said boat was sunk in a favorable condition for raising, being near the shore of the river, and in a position that, with ordinary skill and diligence, said boat and cargo could have been raised entire with but little expense; and if so raised with success would have been of the probable worth of fifteen thousand dollars or over. That such being her condition the libellants, McClelland and McGinnis, solicited this respondent to enter into a contract with them for the raising of said boat. That as an inducement to persuade this respondent to enter into a contract with them for the raising said boat, said McClelland and McGinnis held out and pretended that they had much skill and experience in said business, and that they

could readily and easily sell said boat, and, owing to her favorable position, for a moderate price. That believing in their said representations this respondent entered into the contract hereunto annexed, marked "*A*," and made a part of this allegation and answer. That after entering into said contract, and in pursuance thereof, said libellants, McClelland and McGinnis, proceeded to the undertaking of the raising of said boat. And this respondent alleges that in behalf of himself and the underwriters and insurers interested he caused all parts of the stipulations on his behalf to be kept and observed, fulfilling in all things what was incumbent to perform; and further alleges it to be true that he found that said McClelland and McGinnis were proceeding to their efforts to raise said boat without due preparations, and in an unskilful manner; and further says, that he remonstrated with them for their hasty rashness, and insufficient and ineffective appliances, by which and with which they were determined to proceed with their efforts; and further remonstrated with them on the ground that their said undertaking, conducted with such misapplied efforts, would only tend to break and injure said boat, and delay the raising thereof, and be attended only with damage to respondent, and the other interests involved in the success of raising said boat and cargo. That notwithstanding said warning and remonstrances said libellants, McClelland and McGinnis, did proceed, and were permitted to proceed, without interruption from this respondent, and with all the assistance and aid he could give and render in their efforts to raise said boat; that after an effort said McClelland and McGinnis gave over their endeavors and efforts to raise said boat and cargo, but not until they had materially and unnecessarily injured said boat and put this respondent to expenses to a very great amount, and which was unavoidably incurred in consequence of the neglect and unskilfulness of said libellants, and which, with the delay occasioned by their failure, damaged this respondent and those interested in said boat and cargo to the amount of five thousand dollars; and this respondent will claim, as against said McClelland and McGinnis, and against any interest they may be found to have for salvage service, or otherwise, such portion of said damage as shall be sufficient to satisfy the same, and will insist on and claim a decree for the balance of said damage to be proved at the trial against said McClelland and McGinnis personally.

Fourth. This respondent further alleges that after said McClelland and McGinnis had ceased and suspended their endeavors as aforesaid to raise said boat and cargo, and after they had abandoned their said contract, this respondent expressed his determination to sell said boat and his interest in the cargo as they lay for what he could, that upon this, said libellants, in connexion with said James P. Sherwood, not only insisted that they were competent to raise said boat and cargo, but also proposed to enter into an arrangement by which they would undertake to raise said boat and cargo at ther own entire risk and expense, including the expenses which had already been incurred,

provided that said respondent would allow said libellants to purchase said boat and the interest of respondent therein at the sum of four thousand dollars; that in pursuance of said proposition and the assurance given by libellants that they could and would raise said boat and cargo and pay for the same the sum of four thousand dollars as aforesaid, in addition to all the said expenses theretofore incurred, and thereafter to be incurred, the said parties respondent and libellants entered into the said contract or agreement dated on the said 24th day of April, 1856, and attached to and made a part of the libel of information: and this respondent hereby and herein admits that the same was executed and delivered between said parties as a valid and subsisting contract, at the date and place therein mentioned, and denies that said contract has ever been in any way or manner annulled or abrogated by this respondent, or with his consent so as to discharge said libellants from their undertakings and obligations therein expressed and contained.

Fifth. This respondent further answering, denies that he in any manner interfered with said libellants in their attempted execution of said contract, or that he in any manner hindered or prevented them from performing the same, but on the contrary this respondent alleges that said libellants were pecuniarily irresponsible or pretended so to be, that they had neither means or credit to pay for labor, or expenses, materials and provisions necessary to be obtained in carrying on said work, that this respondent, whose interest prompted him to do everything in his power that might contribute to the success of said boat and cargo, did, at the request of libellants, advance money, hire hands, furnish provisions, assume payments for libellants, render personal assistance, and otherwise contributed to the aid of libellants in all to the amount of five thousand five hundred and thirty-five dollars and twenty-seven cents or thereabouts, and this respondent hereto annexes a bill of said expenses and charges marked as Exhibit B, and herewith made a part of this claim and answer, and this respondent insists that he is entitled to and prays for a personal decree against libellants for the full amount of the same, or of such portion thereof as this Hon. Court shall decree just.

Sixth. This respondent alleges that said libellants in their proceedings and endeavors to raise said boat and cargo under their said contract of the 24th of April, 1856, aforesaid, managed their work negligently, unskilfully, and with great needless expense, and carelessly and uselessly broke up, damaged and injured said boat in her hull, apparatus, engines and machinery, so much so as to render said boat of little value, whereby this respondent in consequence of libellants' neglect or refusal to take said boat and pay for the same, and to pay said expenses of raising as stipulated in said contract, was damaged to a further large amount, to wit, two thousand dollars or thereabouts, and for which said additional damage, this respondent prays for a personal decree against said libellants.

Seventh. This respondent alleges that after said boat and cargo

were raised, and the same being in an extremely dilapidated and damaged condition, mostly occasioned by the delay, mismanagement, carelessness, and unskilfulness of libellants, said libellants gave notice to this respondent that they should not regard their said contract by them executed as aforesaid, but in lieu thereof they should claim for salvage service: that upon such determination being notified to this respondent, this respondent notified and gave said libellants to understand, that if they did not choose to work under their said contract and to go on with it, they must not have anything further to do with said boat and cargo; that upon this, said libellants instead of bringing said boat and cargo to Galveston, left the same in said Trinity River, and wholly abandoned said boat and cargo, and have always since refused to perform or fulfil their said contract, to the great damage of this respondent, to wit, the damage of other ten thousand dollars, and for which, in addition, this respondent claims that said libellants should and ought to be made personally responsible by decree of this Hon. Court.

Eighth. This respondent further alleges that after the abandonment of said contract by libellants, and their refusal to go on with the performance of the same, this respondent continued to incur the expenses of taking care of, preserving, and saving said boat and cargo, and of transporting said cargo to Galveston, in order that the same might be disposed of to pay expenses incurred by respondent, and for the benefit of whomsoever it might concern; that after waiting a reasonable time for libellants to perform their said contract, and take and pay for said boat and cargo, or the interest they stipulated to purchase, and they entirely neglecting and refusing to perform, this respondent, with the advice and consent of those interested, caused said boat, tackle, apparel and furniture, engines and machinery, and saved portion of said cargo, to be sold at public auction at Galveston, which was done openly and fairly to the highest and best bidders, said sales being made and conducted by E. L. Ufferd as auctioneer, after due notice of time and place of sale in the usual and customary manner; which sales, including some sales made previously with the knowledge and consent of libellants, disposed of the whole and every part of said steamboat, her tackle, apparel, &c., as well as of her entire cargo. And this respondent hereto annexes a full statement of the receipts of all said sales, embracing the aggregate amount and the items thereof, and alleges the same to be true to the best of his knowledge and belief; and which is marked as Exhibit C. and made a part of this respondent's answer.

Ninth. This respondent further alleges that he purchased the hull, engines, machinery, &c., of said steamer in good faith, at the price of six hundred and ten dollars, as he had a lawful right to do, at said auction sale, and which sale was fairly made by said E. S. Ufferd as auctioneer to this respondent; that after the said sale was made to this respondent he took possession of the same in his own right as he well might do. That after said sale to him, this respond-

ent has in good faith incurred expenses in and about said hull, engines, apparatus, and machinery, in taking care of, preserving and improving the same to a large amount, to wit, the amount of twenty-three hundred and twenty dollars and fifty-nine cents, or thereabouts, and all of which said expenses were incurred by this respondent between the said day of sale and the 31st day of December, 1856, and all of which this respondent was obliged to incur in protecting, securing and improving said property, and this respondent will claim and insist that he should be protected in said purchase, and his expenditures upon said boat, engines, machinery, &c., and respondent hereto annexes a statement of the expenses last mentioned, and the items thereof, and prays that the same be made a part of his claim and answer, and which statement or exhibit is marked D.

And this respondent therefore claims the said Steamboat Kate, her tackle, apparel, engines and machinery, and every part thereof, as his own property, and further that the proceeds of the sales of said boat and cargo, and denies that said libellants have any just claims either upon said boat, engines, and machinery, or upon said cargo, or the proceeds of the sales thereof, and therefore prays that said libel be dismissed, and that libellants be decreed to pay the costs of this Hon. Court; and further that this respondent be confirmed in his just rights by decree of this Hon. Court, and also prays for any other and different decree that may be just according to the course of proceedings in this Hon. Court. And this respondent, &c.

SHERWOOD and GODDARD,
Proctors for Claimant Bondies.

District of Texas, ss.

George Bondies of said district, being duly sworn, says, he is sole owner of the above named Steamboat Kate, her tackle, apparel, engines and machinery, and further that the foregoing answer by him subscribed is true to the best of his knowledge.

GEORGE BONDIES.

Sworn and subscribed before me this third day of January, A. D. 1857.

JAMES LOVE,
Clerk.

Exhibit A.

STATE OF TEXAS,
County of Galveston.

Articles of agreement entered into this eighth day of April, A. D. one thousand eight hundred and fifty-six, between George Bondies, master of the steamboat Kate, now lying sunk in the Trinity river, of the first part, and Joseph McClelland and Barney McGinnis of the second part showeth: That the said George Bondies proposes

and agrees to furnish to the parties of the second part with six men, and all such other materials as have been designated by said parties of the second part, and which are now in course of being forwarded to the wreck; together with a submarine armor valued at two hundred and sixty-one dollars and forty-five cents, all of which the said parties of the second part accept and agree to do, and for which service, if they succeed, are to receive as compensation for their time and labor, the sum of five hundred dollars, to be paid them by the party of the first part, out of the proceeds of the sale of the cargo of the said steamboat "Kate." But provided that they do not succeed in raising the said steamboat "Kate," then they are not to receive any compensation whatever, and are not to have any claim of any description whatever upon the said George Bondies, master, the said steamboat Kate, or owners, or the cargo of said steamboat. It is further agreed that the parties of the second part are to receive the said submarine armor at two hundred and fifty dollars in part payment of the above named five hundred dollars; and in case they succeed in raising said boat, are to return the armor to said party of the first part. It is also agreed that the parties of the second part are to proceed in their endeavors to raise the said steamboat with all due diligence, and are not to cease, leave, or abandon the work, but are to use all the exertion in their power and means at their control in order to float said steamboat, otherwise this agreement to be null and void, and of no effect whatever. It is further agreed, that in case of dispute between the parties to this agreement, as regards its meaning and effect, we will select Joseph J. Headley of Galveston, as our referee, and whose decision shall be binding and final to both parties in this agreement. In witness whereof we have hereunto set our hands and scroll for seal at Galveston, this 8th day of April, A. D. 1856.

GEORGE BONDIES, [SEAL.]
JOSEPH McCLELLAND, [SEAL.]
BARNEY McGINNIS, [SEAL.]

Witnesses present, E. P. HUNT,
WM. M. HUDSON.

Exhibit B.

Expenses of the wreck of Steamer Kate from April 5th, 1856, till May 31st, 1856.

Wages of Capt. Bondies, 1 month 26 days, $150 per month,	$280 00
Board of do 57 days, @ $1.00 per day,	57 00
Wages of Th. Rhote (1st clerk), 1 month 24 days, @ $150 per m.,	270 00
Board of do 55 days, 60 c. p. d.,	33 00
Wages of D. Conner, 1st engineer, 11 days, @ $150 per m.,	55 00

Board of D. Conner, 1st engineer, 11 days, @ 60 c. p. d.,	6 60
Wages of V. Farren (2d engineer), 2 days for diving, $5.00,	10 00
do of do 1 month 5 days, @ $75 per m.,	87 50
Board of do 1 m. 7 days, @ 60 c. p. d.,	22 20
Wages of C. Baxter (1st mate), 1 month 25 days, @ $100 per m.,	183 33
Board of do 37 days, @ 60 c. p. d.,	34 20
Wages of H. Miller (2d clerk), 1 m. 2 days, @ 50 c. p. d.,	53 33
Board of do 37 days, @ 60 c. p. d.,	22 20
do of H. Stevens (pilot), 26 days, @ 60 c. p. d.,	15 60
Wages of D. McCullum (watchman), 1 m. 25 d., @ $40.00,	73 33
Board of do 57 d., @ 60 c. p. d.,	34 20
Wages of McGean (carpenter), 13 days, $60 p. m.,	26 00
Board of do 15 days, @ 60 c. p. d.,	9 00
Wages of Varney (2d mate), 13 days, @ 50 p. m.,	21 67
Board of do 15 days, @ 60 c. p. d.,	9 00
Wages of H. Grossman (striker), 11 days, @ $30 p. m.,	11 00
Board of do 11 days, @ 60 c. p. d.,	6 60
Wages of 2 negroes, Moses and Conner Gilky, 1 m. 13 days, @ $65 p. m.,	93 17
Board of do 44 days, @ 80 c. p. d.,	35 20
Wages of 2 negroes, Dolly and Tom Evans, 1 month 26 days, @ $38 p. m.,	70 93
Board of do 56 days, @ 80 c. p. d.,	44 80
Wages of 1 negro, John Brousset, 1 month 13 days, @ $40.00,	57 33
Board of do 44 days, @ 40 c. p. d.,	17 60
Wages of 5 deck hands, 15 days, @ $200 p. m.,	100 00
Board of do 15 days, @ 20 c. p. d.,	30 00
Wages of 1 negro, James Davie, 2 days, @ $40 p. m.,	2 67
Board of do do @ 40 c. p. d.,	80
Over,	1773 26
Over,	1773 26
Wages of deck hand, M. Miller, 2 d., @ $40 p. m.,	2 67
Board of do 2 days, @ 40 c. p. d.,	80
Wages of deck hand, Solmal, 1 m. 7 days, @ $40 p. m.,	49 33
Board of do 38 days, @ 40 c. p. d.,	15 20
Wages of deck hand, Schultz, 1 m. 7 days, @ $40 p. m.,	49 33
Board of do 38 days, @ 40 c. p. d.,	15 20
Wages of negro, Robert Andrews, 15 days, @ $40 p. m.,	20 00
Board of do 15 days, @ 40 c. p. d.,	6 00
Wages of deck hand, James Sullivan, 1 m. 26 days, @ $40 p. m.,	74 67
Board of do 1 m. 27 days, @ 40 c. p. d.,	18 67

Wages of 5 deck hands, 3 days, @ $20 p. m.,	20 00
Board of do 15 days, @ 40 c.,	6 00
Wages of Ralph Parora (cabin-boy), 1 m. 26 days, @ $10 p. m.,	18 67
Board of do 57 days, @ 40 c.,	22 80
Charter of Sloop Eliza 11½ days, @ $15 00 p. day,	172 50
Wages of Thomas Carrigan 11½ days, @ $2 50 p. d.,	27 50
Board of 4 men on Sloop Elise, 12 days ea., 60c. p. d.,	28 80
" McGinnis & McClelland, 12 days ea., 60c. p. d.,	14 40
" 3 men with McGinnis, 12 " 60 "	21 60
" 5 men with McClelland, 12 " 60 "	24 00
Wages of M. Sweeny for 3 negroes 3 days,	13 50
Board " same 3 " ea. 40c. p. d.,	3 60
Wages " Capt. Stubbs for 3 negroes and 2 white men, 4 days,	15 00
Board " Capt. Stubbs for 3 negroes and 2 white men, 4 days, ea. 40c.,	8 00
Expenses of Captain Bondies to Galveston, April 7th,	5 00
do Theo. Rhote " April 29th,	29 00
Charter of schooner Hero for two days,	30 00
Conveyance of Capt. Bondies from Union Mills to Morse Bluff,	2 00
Wages and board of 1 hand, May 8th,	1 00
Wagon hire for hauling goods to Morse Bluff,	7 00
Wages and board of 1 hand, May 17th,	1 60
Freight on 1 bbl coal from Galveston,	50
Wages and board of 9 negroes, April 13th,	14 85
Total,	2,517 43
Total,	2,517 43
Wages of white men and negroes, and board of same, Ap'l 17,	22 40
Wages of 2 negroes and board, April 17,	3 80
Board of hands volunteering work, fr. Ap'l 5 to May 31,	30 00

Expenses from June 1.

June 29.	1 flat boat bought of R. & D. G. Mills,	50 00
	Expenses of Capt. Bondies to Galveston and back,	42 50
20.	Expenses to bring up flatboat to wreck,	1 50
25.	5 days' hire of negro, John Broussat,	7 00
July 6.	Hire of 4 negroes,	4 00
20.	" 4 do	7 50
	" 2 do	3 00
	Hire of 1 negro,	2 50
25.	" 3 " 3 days ea.,	18 00
30.	Wages of 6 white men, in all 30½ days, $2 00 p. d.,	61 00

	Hire of negro John Tilten 5 days,	10 00
Aug. 1.	" " A. LeBlanc, 2¼ days,	5 00
2.	Mr. Doer's cooper bill, 80 hoops, 20c. p'r hoop,	6 00
	Wages of T. Brooks 3¼ days,	10 50
6.	" S. Dugat 10½ "	21 00
	M. M. Sweenly, negro hire, 29½ days,	59 00
13.	Wages of 6 men together 17 days, @ 3 00 p. d.,	51 00
14.	Hire of 2 negroes of Capt. Stubbs, 43½ days,	87 00
	" 1 " Mrs. Montgomery, 18 d's,	36 00
	" 1 " O. Gillard, 5½ days,	11 00
17.	" 1 "	1 25
18.	" 3 negroes of Spights	5 00
19.	House rent to Mrs. Chambers at Moss Bluff,	7 50
	Hauling goods from house to landing,	2 95
24.	Hire of 3 negroes, 3 nights' work,	3 00
	" 2 " of Captain Stubbs, together 7 days,	14 00
	Wages to W. Cooper, 6 days,	12 00
	Hire of 1 negro, John Tielten, 6½ days,	6 50
	Over,	$3,135 33
	Over,	3,135 33
Aug. 31.	Hire of 2 negroes of Speight's,	2 00
Sept. 1.	Bill of G. S. Snyder for 6 pair of blankets,	7 50
	Hire of 1 hand loading at Wallisville,	90
	" 1 negro " "	1 25
3.	Labor on wharf discharging schooner Oregon,	1 50
6.	Charter of schooner Oregon for carrying goods,	50 00
June 15.	Hire of 2 negroes,	4 00
	Hire of horse to convey Captain Bondies to Anahuac,	2 00
Aug. 23.	Wages to Thompson from July 23—date, 26 working days, at 2 00,	52 00
Sept. 15.	Wages to J. Sullivan from June 1—date 3½ months 40 c. p. m.,	140 00
	do R. Parrera from June 1—Sept. 3, $3\frac{1}{10}$ months, 10 00 p. m.,	31 00
	do D. McCullum, from June 14—June 24, 11 days, @ 40 p. m.,	14 66
	do June 24, 11 days, from June 25—July 21, 23 days @ 2 p. d.,	46 00
	do do. from Aug. 31 till Sept. 15, 15 days @ 40 p. m.,	21 33
	do Charles Baxter, from July 1 to Sept. 1, 2 m. @ $2 p. m.,	104 00
	do George Bondies, from June 1 to Sept. 15th, 3½ m's @ $1 50 p. m.,	525 00

	Wages to Th. Rhote, from June 1 to Sept. 15, 3½ months @ $150 p. m.,	525 00
	Hire of mulatto boy, Tom Evans, from June 1 till Aug. 13, 2 m. 13 days, @ 24 p. m.,	58 40
	do mulatto woman, Polly Evans, from June 1—Sept. 15, 3½ m's @ 15 p. m.,	52 50
3.	Expenses of George Bondies from Wallisville to Galveston and back,	7 50
15.	Warfage, bill of goods, etc. "Oregon" and "Elise,"	19 16
	Board bill of all hands, June 1—date,	714 90
Oct. 17.	Bill of sundries of A. Lewis & Co.,	19 34
		$5,535 27

Exhibit C.

April 10–17.	Books 75 c., broom 40 c., domestic $3, 2 hats $2 50, sundry dry goods $18 35, books $1 55, books 75 c., books 75 c., shoes $1, hat $1 50, 2 p'r boots $4, 1 pair boots $2, books 75 c., 1 p'r boots and 1 p'r shoes $3, 2 p'r boots $4 00, 1 p'r boots $2, 1 p'r boots and 1 p'r shoes $3, 1 p'r boots $2, sundries $1 50, 1 p'r shoes $1, 1 p'r saddlebags $2, 1 pair shoes $1, 2 hats $1 50, 1 comb 20 c.,	$63 50
18.	258 y'r domestic @ 6 c. $15 50, 1 p'r saddlebags $2, 102 y. domestic @ 7½ c. $7 65, 1 sheepskin $2, 1 saddlebags $2, 2 p'r shoes $1 50, 112 y. domestic 7½ c. $6 20, 4 hats $1, 1 blanket $2 50,	40 35
19.	30 y. domestic 7 $2 10, 71 y. domest. 7½ c. $5 35, hat 50 c., 1 p'r shoes 50 c., 41 y. domestic 7½ $3 10, 2 p. shoes 75 c., 1 box shaving cream 22 c., 1 coat $2 50, 1 hat 50 c., 3½ y. dómestic 28 c., thread 15 c., 29 y. domestic 7½ $2 20, 1 hat 25 c. 1 p'r shoes 50 c., 2 sides leather $6 30, 2 p'r shoes 50 c., 2 p'r scissors and razor 40 c., 30 y. calico $3 00, 32 y. cottonade 10 c. $3 20, brush 10 c., 32 y's cotton 10 c. $3 20, 23 y. domestic 8 c. $1 85, 3 p'r shoes $2 40, 30 y. domestic $3, 33 y. domest. 6 c. $2; knife 10 c., 1 p'r shoes $1, 1 hat 50 c., 1 p'r scissors 10 c., 4 knives 40 c., 2 scissors 20 c., 2 hats 75 c., knife 10 c., matches and thread 15 c., broom 10 c., 1 pair of blankets $2 50, 1 p'r pants $1, 4	

p'r spurs $1, 2 shirts $2, knife 10 c., 1 p'r pants $1, broom 25 c., razor 20 c., 1 spur 15 c., knife 10 c., 73 55

Over, $177 40

Over, 177 40

Apr. 20. 35 y. domestic 7½, $2 63; 33½ y. domest. 15 c., $5 02; 133 y. domest. 7½, $10; 97½ y. domest. 7½, $7 35; tobacco 50 c., 6 y. linen 20 c., $1 20; 5½ y. muslin 15 c., 80 c.; 1 p'r shoes 50 c., 5 y. linen $1, 1 p'r shoes 50 c., 33½ y. domestic 7½ c., $2 50; 28 y. calico 10 c., $2 80; hat 20 c., thread 60 c., 18 yards calico $1 80, basket and thread, 45 c., 9 p'r shoes $7 00, scissors 10 c., lead 25 c., 48 y. domestic 15 c., $7 20; 1 side leather $3 75, 4 hats $1 10, 3 p'r shoes $2 50, 6 knives and forks $1 00, shoes 40 c., 31 y. domestic 15 c., $4 65; 1 p'r shoes $1 00, books 25 c., 2 p'r suspenders 25 c., 4 hats $1 50, 4 knives and book 80 c., 69 60

21. 6 p'r shoes $3 00, 36 yards moussel $4 50, 9 y'ds mous. 10 c., 90 c.; 37 y. prints 10 c., $3 70; 78 y. domest. 7½, $5 85; 10 y. prints $1 00, 71 y. moussel $8 88, 10¼ y. mous. 10 c., $1 03; 37 y. cotton print 10 c., $3 70; 293 y. domest. 7½, $21 95; 1 p'k'g gloves $1 00, 2 p'r blankets $8 00, books 50 c., 103 y. cotton prints $10 30, 1 p'r blankets $2 75, 67 y. domest. 7½, $5 03; 74 y. calico 10 c., $7 40; 19 y. moussel $2 37, 1 p'r saddlebags $2 00, 10 y. prints $1, 34 y. cottonade 7½, $2 55; 4 p'r shoes $1 00, 1 p'r blankets $2 75, 9 y. cottonade $1 10, 15 y. livery 15 c., $2 25; 20 y. domest. 7½, $1 75; 1 p'r saddle blankets $2 00, 1 p'r shoes $1 00, 2 brooms 30 c., knives and forks 85 c., 13 y. flannel 22½ c., $2 95; socks and thread 45 c., 1 axe $1 00, 19 y. calico $1 90, 1 p'e ticking $1 50, 179 y. dom. 7½, $13 45; 2 p'r shoes $2, hat 10 c., 27 y. kersey 15 c., $4 05; 156¾ y. domest. 7½, $11 75; 72 y. calico 10 c., $7 20; 1 pair blankets $2 75, 4 p'r shoes $4 00, thread and knife 30 c., 10 y. cottonade $1 00, 1 p'r shoes $1 00, hat 25 c., thread 05 c., 6 bottles eau de Cologne 75 c., 10 brooms $1 56, 168 35

22. 6 y. calico 60 c., broom 15 c., soap 75 c., 30 y. domest. 8 c., $2 40; 10 y. domest. 80 c., shoes $1 00, 3 hats 30 c., 20 y. calico $2 00, 20 y. cottonade $2 00, 40 y. domest. 8 c., $3 20; 28 y. cotton 7½, $2 10; 40 y. domest. 7½, $2 60; 15 y. ticking $1 85, 2 pair shoes $1 50, 5 p'r stockings 50 c., 1 p. spurs 25 c., 1 p'e cotton 75 c., 1 p'e calico $2 15, 9 pair of stockings $1 20,

Over, $415 35

Over, 415 35

2 p'r shoes and boots $1 75, 19 y. calico $1 90, thread 30 c., 9 p'r stockings $1 10, 1 p'r shoes $1 00, 2 hams $2 35, broom 15 c., 5 p'r shoes $4 00, broom 20 c., books 25 c., 3 p'r stockings 40 c., 2 fishlines 20 c., 1 tin box 25 c., 5 combs 35 c., 40 30

23. 1 pair gaiters $2 50, 3 p'r shoes $2 50, 1 coat $1 00, 2 hats 20 c., 18½ lbs. tobacco 7 c., $1 30; hat and comb 20 c., 1 p'r shoes $1 00, 10 y. calico 1 00, 25 y. domest. 8 c., 2 00; 1 p'r chains 75 c., 17 y. domest. $1 35, 20 y. domest. 7½, $1 50; 20 y. domest. 4 c., 80 c.; 1 p'r blankets $2 00, 1 p'r shoes $1 00, 9½ y. domest. 75 c., 3 p'r shoes $1 50, 4 handkerchiefs 50 c., 38 p'r stockings $3 80, 36 y. calico $3 60, needles 20 c., 1 axe $1 00, 2 sacks 15 c., 1 p'e domestic $2 50, 109 y. kersey 14 c., $15 26; 28 y. linsey 3 50, 78½ y. cotton, 9 c., $7 06; 77 y. calico 8 c., $6 16; 32 y. cal. 10 c., $3 20; 6 p'r shoes $5 50, 67½ y. cotton 10 c., $6 70; 10 y. moussel 12 c., $1 20; 27 y. calico $2 70, 1 p'r shoes $1 00, spoons and comb 30 c., thread and thimble 15 c., 1 p'r shoes $1 00, 1 hoe 30 c., 1 p'r shoes $1 00, 4 brooms 50 c., basket 25 c., 1 carpet bag and thread $1 20, 90 15

24. 1 shirt 75 c., tobacco $1 00, 16 y. calico $1 50, 6 y. domest. 50 c., 2 candlesticks 40 c., 27 y. calico $2 70, 1 ham $1 85, 8 70

25. 30 y. domest. 7½, $2 25; 71 y. domest. 5 c., $3 55; 1 saddle $18 00, 2 hats 20 c., 1 keg of nails $3 00, 38½ y. calico 5 c., $1 90; 32 y. domest. 8 c., $2 55; 3 hats 30 c., 1 keg of nails $3 00, 30½ y. domest. 7½, $2 30; 31 y. calico 6 c., $1 85, 40 15

26. 2 p'cs calico $2 00, 4 hoes $1 00, brush 25 c.,

	3 p'r shoes, $1 50, 1 p'ce cotton $1 00, thread 75 c., 1 hoe 25 c., 12 y. ticking $1 50, 1 p'r shoes 50 c., thread 25 c., 40 y. shirting 6 c., $2 40; thread and pins 65 c., hooks and eyes 50 c., 6 hoes $1 50, 2 pieces calico $3 00, 32½ y. domest. 10 c., $3 25; 1 p'r blankets $2 00, ribbons 50 c., combs and ribbons 70 c., 40 y. shirting, 5 c., $2 00; 3½ d'z combs $1 00, 1 p'r shoes 50 c., sundries $2 00,	29 00
	Over,	$623 65
	Over,	$623 65
Apr. 27.	9 y. ticking $1 15, hat 10 c., 3 p'r shoes $2 00, 1 ax $1 00, tobacco 25 c., hoes 60 c., ribbons 50 c., bacon $1 00, baskets 20 c., 2 p'r shoes $1 25, thread $1 00, combs and needles 75 c.,	9 80
28.	27½ y. kersey $4 13, 2 p'r scissors 50 c., buttons and suspenders 80 c., 35 y. calico $2 48, 1 remnant calico 45 c., buttons 50 c., pins and ribbons 45 c.,	9 30
29.	191 y. domestic 7½, $14 30; 1 pr. boots 75 c., 10 y. domes. 7½, 75 c., 70 y. calico 6 c. $4 25, 9 y. domestic 75 c., bonnet 25 c., books 20 c., bonnets 20 c., comb 20 c., 1 ham 75 c., 3 hoes 75 c., combs 15 c., 33 y. calico 6 c. $2 00, tobacco 20 c., shoes 50 c., lamp 20 c., hoe 50 c., 61½ y. domest. 7½ $4 50, 4 p. shoes $2 00, 2 bowls 50 c., 7½ lbs. candles $2 50, 1 pr. suspenders 10 c., 2 shirts $1 95, 3 y. domestic 80 c., hoe 25 c.,	39 50
30.	Combs 25 c., 39 y. calico 8 c. $3 10, 3 caps $1 50, 22½ y. jeans $2 80, boots $1 00, 3 hoes $1 50, 3 pr. blankets $6 00, 22 y. ticking $2 50, paper 10 c., 72 lbs. hams $4 50, pottery $1 00,	24 25
May 1.	81 lbs. bacon 8 c. $6 48, 23 lbs. ham $2 87, crockery $1 00, 1 p'e domestic $2 25, spoons 25 c., tobacco $1 00, sack 10 c., crockery $1 00,	14 95
Apr'l28.	Received of E. S. Ufferd, Galveston, proceeds of 2 casks bacon, 2 bags oranges, 4 bxs. tobacco, 3 p's bagging, 11 coils rope, 1 bbl. whiskey, lot empty sacks,	189 70
May 2.	Bacon $1 50, sundries 50 c.,	2 00
3.	4 pie's domestic $12 40, lead 10 c., tobacco 35 c., cups and saucers 35 c., domestic 60 c.,	13 80

4.	Bacon $2 00, 83 lbs. bacon $6 64, tobacco 35 c., 3 files $1 10, 1 pr. pants 75 c., 4 pieces domestic, and 1 piece kersey $12 00,	23 04
5.	Domestic and calico, $4 00,	4 00
6.	Domestic $2 00, 1 bbl. molasses $10 00,	12 00
	Over,	965 99
	Over,	965 99
8.	1 axe $1 25, tobacco 50 c., carpet bag 50 c., tobacco 50 c., pitcher 50 c.,	3 25
9.	Domestic $2 35, 1 bbl. molasses $10 00, domestics 75 c.,	13 10
11.	Soap and tobacco 65 c.,	65
12.	1 bbl. molasses 10 00, pitcher 50 c., candles 25 c.,	10 75
13.	58½ lbs. bacon $4 70, 18½ lbs. bacon $1 50, bag shot, tobacco, and flasks $2 30, 2 pr. boots $2 00, pitcher 30 c., 31 y. towell 8 c., $2 50, 1 pr. blankets $6 00, 1 piece domestic $2 75,	22 05
14.	1 blanket $1 25, 1 pr. blankets $2 50, 2 axes $2 00,	5 75
16.	Payment on kersey $2 70, 1 p'e ticking $6 00,	8 70
17.	Plates and pitcher 90 c.,	90
18.	14½ y. linen 35 c. $5 07, 2 bowls 90 c., 1 carpet bag 50 c.,	6 47
1.	20½ y. lining $2 05, 25¼ y. kersey 15 $3 88, 25½ y. domest. 7½ $1 91, 3 y. lining 30 c., buttons, calico, and shoes $2 73, 3 bonnets, $1 50, 32 y. kersey 15 c., $4 80, crockery $5 00,	22 17
7.	Books $5, 3 hats $1 50, books $2 40, shoes $1 00, sugar $3 00, tobacco $4 45, 33 y. domestic $3 30, 2 brooms 70 c., 100 lb. bacon 8 c. $8 00, shoes 60 c., sundries $2 10, 1 axe $1 00, 3 p. shoes $1 80, lead 60 c., suspenders 10 c., pork $14 00, 98 lbs. bacon $7 84, 33¾ y. linsey 15 c. $5 06, mouslin $1 00, 3 shirts $1 50, 24 y. calico 5 c. $1 20, 32 y. cottonade 15 c. $4 80, leather $4 00, 3 bbls. pork $42 00, 2 axes $2 00, 4 bbls. flour $3 $12 00, 2 axes $2 00, 1 bbl. pork $14 00, 301 lbs. bacon 8 c. $24 08,	171 53
16.	Crockery $7 80, 123½ y. lowell 8 c. $9 88, 3 axes $3 00, 59½ y. domestic 7 c. $4 18, 40 y. domestic 6 c. $2 40, 1 bbl. molasses $10 00, 528½ lbs. bacon 8 c. $42 28, 1	

	table cloth $5 00, 38½ y. ticking 1½ $7 22, 2 creamers 50 c., 3 p. shoes $3 00, knives and forks $3 00, 26⅓ y. moussel $3 29, 1 bbl. whiskey $10 00,	109 55
	Over,	1340 36
	Over,	1340 36
17.	Kersey $2 50, lowell 2 10, bleached domestic $5 55, mousseline $3 00, shirt 75 c., berege $1 00, 6 y. domestic 75 c., domestic 65 c.,	16 30
17.	Coat $2 50, calico $1 00, 1 p'e domestic $2 85, coat $2 50, domestic 45 c., calico $2 75, sundries $3 75, 1 pr. boots $2 00, 20 y. flannel $5 00, books $1 00, boots and shoes $3 75, 37 y. domestic 6 c. $2 20, coat $2 00, 45 y. ticking 10 c. $4 50, 32 y. mousseline $4 00, 1 pr. blankets $5 00, 1 p'e calico $3 32,	48 57
22.	3¾ y. casinet 6 c. $2 81, lowell 05 c., 3 y. casimer 6 c. $2 25, 3 y. linen $1 00, 12 y. linsey 20 c. $2 40, domestic 97 c.,	9 48
23.	20 y. gingham 15 c. $3 00, 23 y. calico $2 90,	5 90
29.	1 pr. shoes $1 00,	1 00
30.	33 y. shirting $4 12, 37½ y. domestic 8 c. $3 00, 1 muslin robe $2 50, 39 y. domestic $4 88, 30 y. muslin 20 c. $6 00, 8½ y. satinet $6 37, 8 y. gingham $2 00, 10 y. towelling $1 25, 27 y. flannel 32 c. $8 64, 2 pr. shoes 60 c. $1 20, 27 y. sheeting 20 c. $5 40, sundries $1 00,	46 36
June 5.	1 pr. blankets $5 00, tobacco, 10 c., tobacco $1 50, file 40 c., tobacco $1 00, bacon $2 72, tobacco 60 c., crockery 35 c.,	11 67
7.	Tobacco $1 90, crockery 80 c.,	2 70
11.	1 pr. blankets $2 50,	2 50
12.	1 bbl. molasses $10 00,	10 00
14.	4 pr. shoes $3 25, 57 y. lowell $4 41,	7 60
15.	2 hats 65 c., flour 50 c.,	1 15
16.	19½ y. lowell $1 65, balance on shoes 25,	1 90
19.	Slut $3 20.	3 20
21.	1 Keg nails $4 00, blanket $1 00,	5 00
22.	2 hats $1 00, crockery 50 c.,	1 50
28.	Tobacco $1 00, lead 20 c.,	1 20
July 5.	Bacon $1 75, quinine $1 00,	2 75
	Over,	1519 20
	Over,	$1519 20
July 6.	50 yds. domestic $4 00,	4 00

14.	Domestic 95 c., 1 blanket $1 40,	2 35
15.	20½ y. towels $2 57, 63¾ y. domestic 8 c. $5 10, calico $1 94, sacks $1 50, 1 doz. spoons $1 56,	12 61
16.	Domestic $4 93, sacks 60 c., towels $2 69, spoons $3 00, calico 50 c., pencils 60 c., leather $3, 1 table-cloth $1 50, 2 bonnets $18 00, 1 mantilla $6 95,	41 75
17.	Candles $1 50, 6 lbs. nails 50,	2 00
20.	Thread 25 c., spoons $1 50,	1 75
21.	2 hats $1 00, 17½ y. half linen $3 29, pitcher 55 c., 10 y. ticking 1 00, blanket $1 00,	6 84
22.	Calico $2 50, 1 bbl. pork $16 00,	18 50
24.	Tobacco 25 c., twine 45 c.,	70
25.	1 side leather $3 00,	3 00
27.	Tobacco 25 c.,	25
28.	" 25 c., 1 p'ce calico $1 90,	$2 15
30.	Linen and shoes $1 35, tobacco 30 c., whisky 50 c., shoes and linen $2 50, hat 10 c., whisky 25 c.,	5 00
Aug. 1.	1 p'e towels $2 20, 2 bbls. molasses $20 00, 1 bbl. pork $16, 1 box tobacco $7, 1 bbl. whisky $14, 2 bottles pickles $1 50, 1 p'e domestic $2 30, towels $1, 35 y. ticking $3 50, whisky 25 c.,	67 75
2.	Calico and towels $1 30, 32 y. domestic $2 56, calico $1, shoes 50 c., 35 y. stripes $3 50, 2 pair shoes $1 50, hat and comb 35 c., snuff 25 c., whisky 25,	11 21
3.	3 bottles snuff 75 c., calico $1 45, pitcher 25 c.,	2 45
5.	Calico $5 85, socks 20 c., domestic $2 30, towel $2, 18½ y. ticking 7 c. $1 30, 1 keg nails $3, 1 bbl. molasses $10 00, 1 bottle cordial 50 c., spoons $1 00, crockery 50 c., domest. $2 40,	29 05
6.	Hat 10 c., tobacco 10 c., shoes 50 c., 50 y. domest. $6 25, calico 90 c., 28 y. domest. 8 c. $2 24,	10 09
7.	Whisky 65 c., 1 spade 1 00, shot 80 c., whisky 25 c., domestic $2 40, calico $2 14, shot $1 45, 11 y. kersey $2 06,	10 75
	Over,	1751 40
	Over,	1751 40
Aug. 8.	4 sides leather $16, 2 kegs nails $6, nails 50 c., 161 y. calico 5 c. $8 05, 56 y. linsey $7, 90 y. towel 8 c. $7 20, 30 y. domest. 8 c. $2 40, 10 balls twine 50 c., 50 y. ticking	

	9 c. $4 50, 4 kegs nails $12 00, 44 b'x's sardines $12, hats $1, 2 boxes tobacco $14, 1 p'e cambric 72 c., 4 spoons 50 c., 10 y. towels $1 00, 34 y. kersey $4 25,	97 62
9.	16 lb. shot $1 60, 5 towels $1,	2 60
10.	1 p'r blankets $1 50, calico and ticking $3 00,	4 50
11.	65 y. bagging $8 10, 1 bbl. molasses $10, 31 y. calico $1 55, pitcher 20 c., shoes 75 c., calico 1 20 c., towel 20 c., ticking 1 00,	23 00
13.	Domestic 50 c., domestic $1 34, flannel $1 50, calico 25 c., domestic 75 c., box 20 c., 1 side leather $4, 43 lb. shot $3 45, 9 y. calico 55 c., 1 blanket $1, 1 blanket $1 25, 1 blanket $1 25, 1 molasses gage 75 c., whisky $2,	18 79
14.	Calico $2 45, 1 box tobacco $7, 2 bbls. pork $32, shot $2 50, 6 spoons $75 c., rope $2 00, shoes and hat $1, calico $1 85, 30 y. domestic $2 40, 1 bbl. molasses $10, 1 box tobac- $7, 1 bottle porter 50 c., pickles $1 50, calico and domestics $15 72, 1 keg nails $3, shoes 35 c., calico $1 08, 1 box candles $7 50, tumblers $2 00, 1 box wine $4 50,	105 10
15.	1 bbl. lard $17 00, 1 box candles $7 50, 6 pair russets $3, 121½ y. towel 8 c. $9 72, 35 y. kersey 15 c. $5 25, calico 90 c.,	43 37
16.	Ticking $2 00, 1 keg nails $3 00, lantern 50 c., soap $2 50, nails $1 75, 1 box candles $7 50, 4 candlesticks $2 00, 3 pitchers 60 c., lantern 50 c., 208 lb. lard 10 c. $20 80,	41 15
17.	1 side leather $4, 18 y. domest. $1 30, 1 crucifix $1 50, 5 lb. butter $1 25, compass 25 c., 8 y. ticking $1 00, lead 15 c., 4 y. flannel $1 00, chains $1 00, socks 10 c., 1 lamp $4,	15 55
18.	7½ y. flannel $1 90, 7 y. calico 35 c., calico $1 50, whisky 75 c., spoons 50 c., 22 y. cottonade 15 c. $3 30, 111 y. calico 5 c. $5 55, 20 y. flannel $4 50, 1 p'e domest. $1 88, files and compass $2 00, 1 p'e domestic $2 20, 1 p'r boots $2 00, domestic 50 c., jug 50 c., boots $1 80, blanket $1 25, matches 25 c., shot 90 c., nails $1 40, 16 lb. iron $1 00, 2 spades $1 50, whisky $1 50, 7 p'r shoes $3 50, candles 25 c., 1 bottle syrup 40 c., 2 jars 60 c.,	41 78
	Over,	2144 86
	Over,	2144 86

Aug. 19. 1 box candles $7 50, calico $1 70, 59 y. domestic $4 20, 1 bbl. molasses $10, 23 40

24. 1 side leather $4, 1 p'r shoes $1, 1 bottle claret 50 c., 5 50

25. 112 lbs. nails $3 36, 2 bbls. pork $32, 6 y. flannel $1 50, 13 y. kersey $2 42, 17½ y. calico 70 c., 1 coat $1, blanket $1, kersey 25 c., 8 tumblers $1 75, curry combs 28 c., ½ keg nails $1 50, 45 73

26. 1 bbl. molasses $12, hinges 30 c., whiskey 35 c., ink 50 c., needles 10 c., 28 y. kersey $5 25, 18 50

27. 52 y. stripes $6 50, 42 y. ticking $4 20, 10 70

28. Blanket $1, curry comb 15 c., 6 lb. candles $1 50, spade 50 c., 60 y. curtain calico $2 50, crockery 60 c., 3 boxes tobacco $22, 28 25

29. 62 g'lns whiskey 35 c. $21 70, 1 bbl. pork $16 00, spade 75 c., comb 25 c., sundries $5 00, whiskey 85 c., 2 kegs nails $6, 50 55

30. 13 p'r shoes $8 10, leather $4 00, 6 pair of blankets $12 00, 1 p'r blankets $5 00, 20 y. kersey $3 90, 3 axes $3 00, 36 00

31. Chair 50 c., candles 50 c., 1 keg of nails $3 00, 2 pair blankets $4 00, tobacco 10 c., 12 y. kersey $2 25, table cloth $1 75, 1 adze $1 50, tobacco $1 00, 1 bbl. pork $16 00, 1 bbl. of molasses $12 00 44 05

Sept. 1. 60 y. calico $2 75, boots $1 00, 1 bbl. molasses $12 00, 3 boxes tobacco $16 00, 1 bbl. molasses $12 00, 12 y. kersey $2 25, nails $2 50, soap $1 50, calico $3 05, towel $1 90, dipper 20 c., saw $2 25, 27¼ y. kersey $5 15, spade 65 c., socks $1 00, 3 spades $2 25, socks $1 00, 1 spade 75 c., pickles 75 c., 68 95

June 6, to Aug. 16.

1 pair shoes $1 00, 60 lbs. bacon $4 86, 1 bbl. molasses $10 00, crockery 90 c., 1 axe $1 00, 14 lb. soap $1 10, 55 y. checks $3 44, axe handle and compasses 75 c., 1 bbl. molasses $10 00, tobacco $1 00, 55 y. towel 8 c. $4 40, 29 y. calico $1 45, 39 y. calico $1 17, 50 y. ticking $3 50, 25 y. checks $1 00, 2 p'es calico $3 25, 30 y. domestic $1 50, 30 y. calico 60 c., 29 y. towel $2 32, 27¼ y. domest. $1 35, 1 p'r blankets $1 75, 39 y. calico $2 34, 65 y. bagging $8 13, calico $1, 117 lb. rope 8 c. $9 36, 6 y. linen 75 c., domestic 12 c., shoes 50 c., 1 bbl. pork $16,

	30 y. calico $1 20, shirts and pants $4 00, 1 p'r boots $2 00, 21 y. lawn $2 63, 27 y. calico $1 89, syrup 40 c., whiskey 50 c., 60 y. calico $2 40, 16 y. ticking, $2 00, 1 p'r blankets $2 00,	113 50
	Over,	2,589 99
	Over,	2,589 99
Sept.	Received of E. L. Ufferd, cash as part of goods sold at auction from wreck of steamer Kate,	800 00
	Goods bought at auction of E. L. Ufferd, by George Bondies,	158 65
15.	Steamer Kate, bought at auction of E. L. Ufferd by Geo. Bondies,	610 00
		$4,158 64

Exhibit D.

Expenses of Steamer Kate from September 26 till Dec. 21.

Wages of Charles Baxter from September 21 till December 23, 2 months, 27 days, @ $60 p. m.,	114
Board of the same 59 days @ 60 c. per day,	35 40
Wages of James Sullivan from Sept. 16th till Dec'r 31, 3½ months, $40 00 p. m.,	140 00
Board of the same 107 days @ 60 c. p. day,	64 20
Wages of N. Farrow from Sept. 26 till Nov. 19th, 1 m. 23 d., $75 per month,	132 50
Board of the same 55 days, 60 c. p. day,	33
Wages of Peter Johnson from Nov. 2 till Dec. 31, 1 month, 29 days, @ $45 p. month,	88 50
Board of the same 60 days at 60 c. p. day,	36 00
Wages of George Arnold from Sept. 26 till Nov. 19th, 1 month, 23 days, $20 p. m.,	35 33
Wages of Dan. McCullan from Sept. 16th till Oct. 22, 1 month, 7 days, $40 00 p. m.,	49 33
Board of George Arnold 55 days, 60 c. p. day,	33
Board of Dan. McCullan 37 days, 60 c. p. day,	22 20
Wages of George Bondies from Sept. 16 till Dec. 31st, 3½ months, $1 50 p. month,	525 00
Board of the same 107 days, $1 p. day,	107
Wages of Th. F. Rhote from Sept. 16 till Dec. 31st, 3½ months, $1 00 per month,	350
Board of the same 107 days, $1 p. day,	107
Travelling expenses of Geo. Bondies forward and backward from Galveston to Wallisville,	50

Wages of mulatto, Dolly Evans, from Sept. 16th till Dec. 31, 3½ months, $15 p. month,	52 50
Forward,	$1974 96
Carried over,	$1974 96
Board of mulatto, Dolly Evans, 107 days, 40 c. p. day,	42 80
Bill of Samuel Maas for hauser, &c.,	153 14
Bill of Lewis & Co. for rope, &c.,	11 69
Bill of Charles Spears for blocks, &c.,	75
Bill of 1 grindstone, 1 can oil, and 1 bbl. coal,	13 00
Sundry small expenses to the amount of	50 00
	$2320 59

And afterwards, to wit, on the 16th day of March, of the same year, the Court here made an order in this cause, which is in the words and figures following, that is to say:—

Order.

SHERWOOD *et als.*
v.
STEAMBOAT KATE.

On motion, it is ordered that John S. Jones be appointed Examiner to take testimony in this cause, upon a legal notice being given to either party of the time and place of taking the same.

And afterwards, to wit, on the 15th day of May, of the same year, the Court here made an order in this cause, which is in the words and figures following, that is to say:—

Order.

JAMES P. SHERWOOD *et als.*
v.
THE STEAMBOAT KATE, &c.

This cause came on to be heard, and was argued by counsel for the libellants, as well as for the claimant, and having been submitted to the Court, it is ordered that James Love, Master in Chancery, be directed to enquire: *First.* The amount of work and labor done in the third attempt to raise said boat, at two dollars and two dollars and fifty-cents per day, and also the expenses incurred by libellants in said attempt. *Second.* The amount and value of goods rescued and sold after the first day of third attempt. *Third.* The value of the boat, machinery, and of all property attached to, or belonging to, said boat, after it was raised. *Fourth.* The value of material used, and the deterioration of said material, in consequence of its use, in the third attempt. And the Court, until the coming in of the master's report, reserves its decree.

And afterwards, to wit, on the thirtieth day of May of the same year, the master in chancery appointed in this cause, filed his report and documents accompanying the same, which said report and documents are in the words and figures following, that is to say:—

Notice to Parties to appear.

JAMES P. SHERWOOD *et als.*
v.
S. B. KATE, GEORGE BONDIES, Claimant.

To Messrs. Merriman and Potter, Proctors for libellant; and L. Sherwood for claimant: I am directed by the Court to inquire and report: *First:* The amount of work and labor done in the third attempt in raising the steamboat Kate, at two dollars, and two dollars fifty cents per day, and also the expenses incurred by libellants in that attempt. *Second:* The amount and value of goods rescued and sold after the first day of third attempt; also the value of boat, machinery, and everything attached and belonging to said boat after she was raised. *Third:* The value of material used, and injury done the said material used in third attempt. You will take notice that I will be in Clerk's Office of United States District Court on Monday next, at 10 o'clock, to hear evidence on the several matters of inquiry referred to me. Where you are notified to attend.

JAMES LOVE,
Master in Chancery.

We acknowledge service,

SHERWOOD & GODDARD.

Report.

JAMES P. SHERWOOD *et als.*
v.
S. B. KATE, GEORGE BONDIES, Claimant.

I have proceeded to investigate the several matters referred to me by the Court in this cause, and beg leave to report:—

That the number of days of labor in raising Steamboat Kate, third time, employed by libellants, is 367½ days, at 2 dolls. ℔ day, is,	$752 00
At two dollars fifty cents,	918 75
The expenses incurred and paid by them, or for which they are responsible,	191 50

The names of the persons employed, and the number of days accompanies this report, marked *A*.

The injury done to the material used in the third attempt, $500 00.

The value of the goods rescued in the third attempt, $1,050 00

The evidence, on which this opinion is founded, is submitted, marked *B*.

I have not reported the value of the hull, engines, machinery, &c. that was rescued the third attempt, and refer the Court to the evidence given on the trial as more conclusive than any taken before me.

JAMES LOVE,
Master.

I further report, that I rejected evidence to support accounts filed, marked *A. B. C.*, as not being relevant to the matters submitted to me for inquiry.

JAMES LOVE,
Master.

A.

The names of hands, and number of days each worked (from 22d June, the day they left Galveston, to 26th July, the day the libellants left), that were employed by libellants.

	Days worked.
Benj. Frank,	28
Frank Barnum,	28
McPherson,	28
Bill Caldwell,	28
Dan (little),	28
Tom McCue,	28
Bob Hynes,	28
McGinnis,	28
Carrigan,	28
Portuguese Joe,	15
Thompson,	15
McClelland,	15
Baxter,	19½
Dan (Scotch),	22½
Irish Jemmy,	22½
Hatcher,	4
Collins,	5
Liberty County (so called),	6
Days,	367½

367½ days at two dollars is	$752 00
" " and fifty cents is	918 75
Expenses incurred and not paid by Bondies:—	
Sloop Aliee, 28 days, @ 5 00 ℔ day,	140 00
French Peters' sloop, 18 d. @ 2 00,	36 00
Provisions furnished by libellants,	15 50
	$191 50

The evidence upon which the accounts are reported is, it was read in the presence of Bondies, and not objected to, except that he had paid some of the hands, which was deducted. Baxter and Rhote each said the schooners were in use, but did not know the number of days, or the price; and also of some provisions purchased by McGinnis, the amount not known.

JAMES LOVE,
Master.

McPherson sworn, states that he believes the hands named in the list worked the time stated, and that the schooner and sloop were there the time stated in the bill of expenses.

JAMES LOVE,
Master.

B.

Evidence of Claimant, Theodore Rohte.

The value of the goods saved third attempt, ten or eleven hundred dollars; did not take an account of the goods that were rescued third attempt; does not think any one did. The articles taken out consisted of tobacco, whiskey, nails, iron, flour, cement, sugar, dry goods, molasses, whiskey, and brandy; does not know the quantity of each. The proportion sold that were saved the third attempt is about one-fifth in value of all saved. On being recalled next day said: The expense of repairing the machinery saved was about $500 00. The hull of the boat not fit to put machinery in. The intention was to make a lighter of the hull. The machinery, when new, cost five thousand dollars; it is now five years old. The expense incurred since raising the boat to time of filing the libel is $1,500 00. The engines, &c. on the bank after being raised were worth $1,000 00; the hull, at same time, $700 00—BAXTER. Damage to material used in third attempt $500; that was furnished by libellants. Does not think that the goods saved third attempt was more than one-sixth the value of all that were saved—DAVIS. Saw the hull of the steamer Kate at the mouth of the river; thinks it was worth $300 00—MORGAN L. PARRY. Says that the value of boilers, engines, doctor, pipes, and all attached machinery, when new, is worth $4,000. That he has not seen the machinery since it was raised, and knows nothing of its present value; says that if he wanted to buy on speculation, would not give more than a $1,000.

The claimant offered accounts marked *A*, *B*, *C*, and to prove them by Rohte. They were rejected on the ground that they were not *not* within the scope of the inquiry referred to me, and because they are all embraced in the accounts filed by claimant in his answer.

JAMES LOVE,
Master.

A.

Expenses paid and received by Captain Bondies during the last attempt to raise the steamer Kate.

June 27.	1 flat-boat of R. & D. G. Mills,		$50 00
	Expenses of G. Bondies from Moss Bluff to Galveston and back,		42 50
	Expenses to bring up flat-boat,		1 50
	5 days' hire of negro John Broussat,		7 00
July 1.	4 negroes' work on wreck,		4 00
20.	7 " " " Sunday wages,		13 00
25.	3 " of Ad. Gullard, 9 days' wages,		18 00
	Bill of Mr. Doers, paid Aug. 2, for cooperage of 80 hoops,		16 00
	3½ days' work of W. Brooks, paid Aug. 2d,		10 50
	29½ days' negro hire to Mr. M. Sweny, from July 5th to July 24th,		59 00
	17 days' work on wreck of T. T. Spinks, W. Spinks, R. Spinks, T. Rhoads, T. W. Rhoads, and Anderson, paid August 13th,		51 00
	10 days' negro hire of Capt. Stubbs' 2 negroes from July 15th to July 21, paid Aug. 14th,		20 00
	3 days' hire of A. Spight's 3 negroes, paid August 18th,		5 00
	Wages of G. Bondies from June 22 till July 21st, 1 month,		150 00
	Wages of T. F. Rohte from June 22 till July 21, 1 month,		150 00
	Wages of R. Perera, 1 month,		10 00
	Hire of negroes Tom and Dolly Evans, 1 month, $39 p. month,		39 00
	7 days' board of negro John Broussart, 40 c. p. d.,		2 80
	20 days' board of 14 negroes, 40 c. p. d.		8 00
	5 " " Cooper Doers, 60 c.,		3 00
	3½ " " W. Brooks, 60 c.,		2 10
	29½ " " M. Sweeny's negroes, 40 c.,		11 80
	17 " " 6 men, 60 c.,		10 20
	10 " " Capt. Stubbs' negroes, 40 c.		4 00
	3 " " Speight's negroes, 40 c.,		1 20
	27 " " George Bondies, June 25 to July 21, $1 p. d.,		27 00
	27 " " T. F. Rohte, June 25 to July 21, 60 c.,		16 20
	27 " " R. Perera, June 25 to July 21, 40 c.,		10 80
		Over,	743 60

	Over,	743 60
July 25.	54 days' board of negroes Tom and Dolly Evans, from June 25 till July 21, 40 c. p. d.,	21 60
	216 days' board of Mr. McGinnis and seven men, from June 25 till July 21st, @ 60c. per day,	129 60
	33 days' board of Mr. McClelland and 2 men, from July 11 till July 21, @ 60c. per day,	19 80
	board of other hands volunteering work,	7 50
		$922 10
		$922 10
	27 days' board of James Sulivan, June 25 to July 21st, 60c.,	16 20
	21 days' board of Charles Baxter, July 1st to July 21, 60c.,	12 60
	27 days' board of McClellan, June 25th, July 21st,	16 20
		$967 10

B.

Expenses paid and incurred by Capt. G. Bondies from the time Mr. McGinnis left Moss Bluff up to Sept. 15th, when goods and boat were sold:—

July 30.	Wages of 6 men, F. Bannon, W. Alger, David Tilton, W. Caldwell, McPherson, and another, 30½ days (6 rec.),		$61 00
	5 days' hire of negro John Tilton (rec.),		10 00
Aug. 1.	2½ "	Ad. Le Bame (rec.),	5 00
	3 "	3 negroes of J. Le Blane (rec.),	6 00
6.	10½ "	T. Dugat (rec.),	21 00
14.	33½ "	Capt. Stubbs' 2 negroes (2 rec.),	67 00
	18 "	negro Henry Montgomery (rec.),	36 00
15.	5½ "	" of A. Gillard (rec.),	11 00
17.	1 "	1 "	1 25
19.	House-rent at Moss Bluff to Mr. Chambers,		7 50
	Hauling goods from Moss Bluff to landing,		2 95
24.	3 negroes' hire for one night,		3 00
25.	7 days' hire of 3 negroes of Capt. Stubbs (rec.),		14 00
	6 days' work of W. Cooper (rec.),		12 00
	6½ " hire of negro John Tilton,		6 50
31.	2 " " 2 negroes of Spight's,		2 00
Sept. 1.	1 work hand at Wallisville,		90
	1 negro, loading "Oregon,"		1 25
3.	Labor on wharf, discharging Oregon,		1 50

6.	Charter of schooner Oregon, carrying goods from Wallisville to Galveston (rec.),	50 00
Aug. 23.	26 days' work of Andrew Thompson (rec.),	52 00
Sept. 15.	1 month, 25 days' wages of James Sullivan, from July 22 till date @ $40 per m.,	73 67
	16 days' wages of McCallan, from Aug. 31st till date, $40 per m.,	21 33
	1 month, 10 days' wages of Ch. Bexter, from July 22 till Sept. 1st, $52 per m.,	69 33
	1 month, 25 days' wages of Geo. Bondies, from July 22 till date, $150 per m.,	275 00
	1 month, 25 days' wages of T. F. Rohite, from July 22 till date, $150 per m.,	275 00
	1 month, 13 days' wages of R. Perera, from July 22 till Sept. 3d, @ $10 per m.,	14 33
	Over,	$1100 51
	Over,	1100 51
Sep. 15.	Hire of negro Tom Evans, from July 22 till Aug. 13th, 23 days, $24 per m.,	18 40
	Hire of negro Dolly Evans, from July 22 till Sept. 15th, 1 month, 25 days, $15 per m.,	27 50
3.	Expenses of Geo. Bondies from Wallisville to Galveston and back,	7 50
July 30.	30½ days' board of 6 men, 60c. per day,	18 30
	5 " " negro John Tilton, 40c. per day,	2 00
Aug. 1.	2½ " " " Le Blane,	1 00
3.	3 days' board of 3 negroes of Le Blane, 40c. per day,	1 20
6.	10½ days' board of T. Dugat, 60c. per day,	6 30
14.	36 " " 2 negroes of Stubbs, 40c. per day,	14 40
	18 days' " negro Henry Montgomery, 40c. per day,	7 20
	5½ days' board of 1 negro of A. Gillard, 40c. per day,	2 20
17.	1 day's board of 1 negro, 40c. per day,	40
24.	3 " " 3 negroes, 40c. "	1 20
25.	7 " " 2 " of Stubbs, 40c. per day,	2 80
	6 days' board of W. Cooper, 60c. per day,	3 60
	6½ " " negro John Tilton, 40c. p. day,	2 60
31.	2 " " 2 negroes of Speight's, 40c. per day,	80
Sept. 1.	1 day's board of 1 hand at Wallisville,	60
	1 " 1 negro " 40c.,	40
Aug. 23.	26 " A. Thompson, 60c. per day,	15 60

Sept. 15.	Board of several persons volunteering work,	7 50
	56 days' board of J. Sullivan, fr. July 22, date, 60c.,	33 60
	16 days' " McCallan, fr. Aug. 31, date, 60c.,	9 60
	42 days' " Ch. Baxter, fr. July 22, Sept. 1, 60c.,	25 20
	56 days' " Geo. Bondies, fr. July 22, date, @ $1 per day,	56 00
	56 days' board of T. F. Rohte, fr. July 22, date, 60c.,	33 60
	44 days' board of R. Perera, fr. July 22, Sept. 3, 40c.,	17 60
	23 days' board of negro Tom Evans, fr. July 22, Aug. 13, 40c.,	9 20
	56 days' board of negro Dolly Evans, fr. July 22, Sept. 15,	22 40
		$1449 21

C.

Expenses of steamer Kate from September 15th, 1856, to Dec'r 13th, 1856:—

Wages of Ch. Baxter, Sept. 26 to Dec. 23, 2 m., 27 d. @ $60 per m.,	$114 00
Board of Ch. Baxter, 59 days, @ 60c.,	35 40
Wages of J. Sullivan, Sept. 16 to Dec. 31, 3½ m., @ $40 per m.,	140
Board of J. Sullivan, 107 days, 60 c.,	64 20
Wages of V. Farren, Sept. 26 to Nov. 19, 1 m. 23 d. $75 per month.	132 50
Board of do 55 days @ 60 c.,	33
Wages of Peter Johnson, November 2 to December 31, 1 m. 29 d. @ $40 p. m.,	88 50
Board of do 60 days @ 60 c.,	36
Wages of Geo. Arnold September 26 to November 19, 1 month 23 d. @ $20 p. m.,	35 33
Board of do 55 days @ 60 c.,	33
Wages of D. McCallan, Sept. 16 Oct. 22, $1\frac{7}{30}$ m'ths $40 p. m.,	49 33
Board of do 37 d. @ 60 c.,	22 20
Wages of George Bondies Sept. 16 to Decemb. 31, 3½ months $150 p. m.,	525
Board of do 107 days @ $1 p. d.,	107
Travelling expenses of Geo. Bondies,	50
Wages of D. Rohte, Septemb. 16 to Decemb. 31, 3½ m'ths $100 p. m.,	350

Board of D. Rohte 107 days @ 60 c.,	64 20
Wages of mulatto woman, Dolly Evans, Septemb. 16 to Decemb. 31, 3½ m. $15 p. m.,	52 00
Board of same 107 days @ 40 c.,	42 80
Bill of Sam Maas for rope (hawser),	153 14
" Lewis & Co.,	11 69
" Ch. Speer for blocks,	70
" 1 grindstone, $5, 1 can oil, $5,	15
" 1 bbl. of lard,	3
Sundry expenses,	00
	$2277 79

And afterwards, to wit, on the first day of June of the same year the claimant by his proctors filed his exceptions to the report of the master, which are in the words following, that is to say:—

Exceptions.

UNITED STATES DISTRICT COURT,
District of Texas.

JAMES P. SHERWOOD and others, Libellants,
vs.
The STEAMBOAT KATE and owners, GEORGE BONDIES, Claimant.

And now comes the claimant and excepts to the report of the commissioner in this cause for the following reasons: 1. The evidence offered before him by claimant and rejected, was proper in order to show the expenses incurred in saving the property. 2. Said report is uncertain and insufficient as the basis on which to found any decree, aand should be set aside. Claimant prays that in case said report is not set aside that the evidence offered by claimant and rejected by commissioner be set forth in the statement of the case.

SHERWOOD and GODDARD,
for Claimant.

And afterwards, to wit, on the same day and year the Court here rendered a decree in this cause which is in the words and figures following, that is to say:—

Decree.

JAMES P. SHERWOOD, JOSEPH MCCLELLAND, and BARNEY MCGINNIS,
vs.
STEAMBOAT KATE, her tackle, apparel, engines and machinery, and all the goods, wares, and m'd'se thereon, and against GEORGE BONDIES owner of same.

In Admiralty.

Said cause having been called for trial at a former day of the pre-

sent term of said court, upon the issues as on file, when the parties appeared by their proctors, and after hearing the evidence adduced by the parties, and the arguments of their proctors, the cause was taken under advisement by the Court, and the Court being now fully informed and advised in the premises, finds the facts as alleged in the libel, true. That said steamboat was and is owned by George Bondies, the claimant. That the cargo on board at the time she sunk was insured and abandoned as a total loss, and was purchased of the insurers by said Bondies for the sum of fifty dollars. That the value of the said steamboat, engines and machinery raised from the Trinity River and saved by the libellants, were as saved worth four thousand one hundred dollars, and the goods raised with said steamboat and saved by the libellants were of the value of ten hundred and fifty dollars, making the total value of everything saved at the place by the libellants at the last attempt when said steamboat was raised, the sum of five thousand one hundred and fifty dollars. That the sum expended by libellants for provisions and hands employed by them to assist in raising said steamboat amounted to the sum of eleven hundred and ten $\frac{25}{100}$ dollars. And the damage done to the implements used and owned by libellants while raising said steamboat, from the 22d day of June to the 26th day of July 1856, amounted to the further sum of five hundred dollars, making in all the sum of sixteen hundred and ten dollars. That said Bondies has sold and received the proceeds of all the goods, wares, and merchandise raised on said steamboat, and that said steamboat, tackle, apparel, engines and machinery seized by the Marshal under the writ of attachment issued in said cause are now in the custody of the Marshal of this court.

Whereupon it is ordered, adjudged, and decreed by the court, that the Libellants have and recover the sum of fifty per cent. salvage upon the said sum of five thousand one hundred and fifty dollars, the total value of everything saved, which salvage so adjudged to the Libellants, amounts to the sum of two thousand five hundred and seventy-five dollars, which sum is hereby adjudged to the Libellants against said steamboat Kate, her tackle, apparel, engines and machinery for salvage service, and against George Bondies, the owner thereof.

And it is further ordered and adjudged that if said Bondies fails to pay into court, on or before the 2d day of June, 1857, the sum so adjudged to the Libellants, and all costs of suit, that the Marshal of this court proceed to sell said steamboat, her tackle, apparel, engines and machinery, in front of the United States Court house in Galveston, to the highest bidder, for cash, after having given five days' notice of the time and place of sale, by posting the same on the door of said court house, and upon sale to deliver the same to the purchaser or purchasers thereof, and the money arising therefrom to be paid into the Registry of the court, and the said amount adjudged to the Libellants is to be paid to them out of said money by the Clerk of this

court, then all costs of Court to be paid out of the balance, and if any remains the same is to be paid over to the claimant, said George Bondies; but if the money arising upon said sale is not sufficient to pay said money adjudged to Libellants, then for the deficiency execution shall issue in favor of Libellants against the said Bondies, to be levied and collected on the estate real and personal, credits and effects belonging to said Bondies, wheresoever the same may be found. And it is further adjudged by the court that said George Bondies, and John G. Tod, the security on his stipulation bond for costs, filed in said cause, pay all the costs of Court in said cause, providing the same cannot be made upon the sale as hereinbefore adjudged and decreed, and upon failure so to make and satisfy the same, then the Clerk shall issue execution against said Bondies and Tod, for the amount of costs, to be levied and collected of their estate real and personal chattels, credits or effects, belonging to them wheresoever the same may be found, providing no levy shall be made upon the estate or property of said Tod to exceed the sum of two hundred and fifty dollars, the sum named in said stipulation bond.

JOHN C. WATROUS.

And afterwards, to wit, on the fourth day of June, of the same year, the Proctors for the claimant filed herein their motion for a new trial, which is in the words following, that is to say:—

Motion for New Trial.

UNITED STATES DISTRICT COURT,
District of Texas.

JAMES P. SHERWOOD and others, Libellants.
vs.
THE STEAMBOAT KATE her Tackle, &c., GEORGE BONDIES, Claimant.

And now at this day, that is to say, on the 3d day of June, A. D. 1857, comes the said claimant George Bondies, and moves this Hon. Court that the decree entered in this cause may be set aside, and a new trial granted. And said claimant now here assigns the following causes for setting aside said decree, viz: 1st. The deposition of Heeder was improperly ruled out by the court. 2d. The service performed by Libellants was performed under the several contracts, and constituted no clain for salvage. 3d. The decree under the evidence should have been for the claimant for the full amount of the damage sustained by him in consequence of the mismanagement of Libellants in their attempts to raise the boat; and that damage should have been the difference in value of the boat, &c., as she lay when first sunk, and the value as she turned out after being broken up. 4th. The decree is entirely unsupported by evidence. 5th. The decree is enormous in amount for the reason that the salvage awarded is excessive in any view of the case, and secondly, the commissioner to whom the matter was referred to make or give any allowance for the assistance and expenses of claimant on the 3d attempt to raise the boat.

Thirdly. Making claimant incur the expenses of raising the boat, machinery and cargo and awarding compensation for it to Libellants. It is also moved that the Commissioner's Report be so amended as to show the proof given and offered before him.

SHERWOOD and GODDARD,
Proctors and of Counsel for Claimant.

And afterwards, to wit, on the same day and year, the court here made an order in this cause which is in the words and figures following, to wit:

Order of Court.

JAMES P. SHERWOOD *et al.*
vs.
THE STEAMBOAT KATE, &c.

On this day came on to be heard the motion of Bondies, the Claimant, for a new trial, for causes therein set forth, and the court being sufficiently advised, it is ordered that the motion be overruled.

And afterwards, to wit, on the same day and year, the court here made an order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

JAMES P. SHERWOOD *et al.*
vs.
THE STEAMBOAT KATE, &c.

On this day, the attorney of the Claimant, George Bondies, filed his exceptions to the report of the master, after due consideration by the court, it is ordered that the exceptions be overruled. It is further ordered that the evidence offered by Claimant, and rejected by the commissioner, be set forth in the statement of the case as part of the record.

And afterwards, to wit, on the same day and year, a statement of the evidence at the hearing of this cause was filed herein and ordered to record, and is as follows, viz:—

Statement of Proceedings.

UNITED STATES DISTRICT COURT,
District of Texas.

JAMES P. SHERWOOD, JOSEPH MCCLELLAND, AND BARNEY MCGINNIS, Libellants,
vs.
THE STEAMBOAT KATE, HER TACKLE, APPAREL, &c., GEORGE BONDIES, Claimant.
} In Admiralty.

This cause having come on to be tried before the Hon. John C. Watrous, District Judge, the libellants proposed to read in evidence

certain portions of the answer of claimant, which was objected to by claimant's counsel unless all matters having connection with the portions read by libellants should also be considered in proof. The Court having declared that such would be the case, libellants proceeded to read as evidence those parts of said answer on the first page, commencing with the first paragraph at the word "*First*," and embracing said paragraph down to and including the words "master of said boat," as follows:—

Portion of Answer read in Evidence by Libellants.

First. This respondent admits that said steamboat Kate, at the time mentioned in said libel, or thereabouts, left the port of Galveston, in said District, for a trip up the Trinity River, and to ports and places thereon as mentioned in said libel. That she carried on board freight in goods, wares, and merchandise, as cargo, to be delivered at various ports and places, on said river, to various individuals, which said goods, wares, and merchandise composing said cargo were of the value of twenty thousand dollars, or thereabouts, at the port of lading, to wit, Galveston aforesaid; and that nearly the entire amount of said cargo, if not the whole, was covered by insurance. That said boat, on her passage up the Trinity River, on or about the last of March or first of April, A. D. 1856, was snagged, and with her cargo sunk at or near Morse's Bluff, as mentioned in libel; and that said cargo was abandoned by the owners to the insurers and underwriters as a total loss; and this claimant admits that at the time he was master of said boat.

Also, libellants read and gave in proof, exhibit *C*, the proceeds of the sales of said boat and cargo as attached to said answer, amounting to $4,158 00.

Libellant proposed to prove that after the abandonment of the cargo to the insurers and underwriters in said cargo, claimant purchased out the interest of the insurers and underwriters in said cargo at the sum of fifty dollars, which fact was admitted by claimant's proctor and counsel.

William McPherson, a witness sworn on the part of libellants, testified: That he worked on the steamer Kate last summer down to the 4th of July, 1856, on the last trial when she was raised. Said he worked from the commencement until the boat was raised at the last attempt. Was in the employ of libellants. The boat was under at the bow six or seven feet. There was a large quantity of mud on her deck when raised, and it took a good deal of work to clear her of mud. On our arrival to commence work, and on the night before we commenced, we were talking about the best way to raise her, and I heard Bondies say he had nothing further to do with raising the boat; that McGinnis had entire charge and control of the boat, and hoped that he would succeed in raising the boat. We went to work

the next morning with a full set of hands and implements. Our chains and purchases broke frequently and delayed the raising. The boat was heavy and full of sand, and raised slowly. After some 28 or 30 days we raised the boat. We had to take off cabins and take out machinery before we could raise her. After the cabin was taken off, engines, boilers, and machinery taken out and put ashore, we succeeded in raising the hull. And after raising her we bailed her out, took out the balance of the cargo and opened and dried it, scraped off the mud and sand, and cleared her off. There were eight or nine men in our gang of hands. After the boat was raised up, McGinnis and McClelland left for Galveston to be back in a few days. When they left they told us to continue our work and put the boat in order, and to get the machinery and cargo aboard. We were ordered to work under the direction of Baxter, who was in the employ of libellants. The next day after McGinnis and McClelland went away, Bondies asked me who was to pay me, or who I looked to for my services. I told him I looked to libellants and the boat. Bondies said I had no claim on the boat, and that if I worked there with such views I should leave the boat; but if I worked for McGinnis I might stay. I then went ashore. Bondies, after that, came and talked to me, and induced me to continue work on the boat for him, under charge of Baxter, which I did for seven days, and for which Bondies paid me $14 00. The boat, with all her machinery on board, I do not know the value of. The hull alone would not be worth more than $1200 or $1500. There were two engines and a doctor. McGinnis came back in three or four days, and we all left for Galveston with him after he had a conversation with Bondies. I did not hear that conversation, but in consequence of that conversation we all left. Libellants agreed to pay the hands $2 00 per day if we failed to raise the boat, and two and a half if we raised her. Whilst we were at work raising the boat McGinnis went into the hold with his armor, and raised boxes of goods to lighten her, and they were taken out and dried, and Captain Bondies took them under his charge afterwards. Witness was asked the question what, in his opinion, the damage in breaking chains, ropes, purchases, &c., would amount to. Witness said he thought $400 00 would cover the damage.

Witness in his cross-examination testified that he had been a seafaring man since the age of fourteen years. That he had had no previous acquaintance with raising steamboats, but that he was used and accustomed to rigging purchases and apparatus in overhauling vessels. Witness said they took off the cabin of the boat to lighten her, something had to be done and that was the best they could do. The boat had been there so long that the sand had accumulated—a large quantity of it. It was found after a good many attempts that the boat could not be raised without taking out her machinery. The engines, boilers and ductor, were taken out, chimneys taken down,

fire-beds taken out, grate-bars and brick were generally taken out, and some freight.

The libellants then read in evidence the testimony or deposition of Thomas Carrigan.

Deposition of Thomas Carrigan.

SHERWOOD *et als.*
vs.
STEAMER KATE.

Thomas Carigan sworn says: I worked on the Kate at three different attempts to raise her, the first, second and the last. I was employed by Captain Bondies in the first attempt. The stern of the boat was raised very much by bailing at the first trial, and as fast as she was raised she was hauled in to the bank.

Question. Did Captain Bondies call the hands away from bailing to secure or save the freight?

Answer. He called a portion of them away, or they were called away by his orders, by an officer of the vessel for the purpose of saving freight, as Captain Bondies said they were not gaining any in his estimation.

Question. By whose orders was the stern of the boat hauled into the shore as she was raised?

Answer. I do not know. I attended on Mr. McGinnis when he had the diving dress on. I remember hearing McGinnis say something about reducing the hatch, or hatch combing, so as to make them fit better. The hatch was swollen or would not fit, and was taken up to be sent ashore so as to reduce it or make it fit. It was ordered to be replaced and was put down as it was, and a tarpaulin was put over it. In an attempt to make the hatch fit, we pumped on it, and could not make it go down where it ought to go. Mr. McGinnis gave the order to take the hatch ashore to be worked upon. The order was countermanded by some other person and the hatch was sent aboard again. As it was, Captain Bondies and McGinnis had many conferences which I did not hear. The hatchway above spoken of was under water. It was actually necessary to make the hatch fit tight to bail her out. The hatch could not be made to fit tight without being cut down to go in the combings. I tried to get it in but could not. The boat was snagged under the starboard wheel. The hole was at this time covered with canvas and tacked around with leather strips, and was so stopped as to keep the water out. An attempt was made by the order of Captain Bondies to raise the bow of the boat with shears. The result was that the boat was so heavy forward, that the sticks of timber sunk in the river, came together, and the chains cut through the guards, raised the guard beams and let the water in under them. Whether McGinnis made any objection to Captain Bondies as to this way of raising the boat, I do not know. I however heard him make strong objections to it

to others. Mr. McGinnis made his objections to their mode of raising the boat before the attempt was made, these objections were made to us. It is my opinion that McGinnis would have succeeded in raising the boat by bailing if the hatch had been properly stopped and he had not been interfered with by Captain Bondies. I heard Captain Bondies make objections to cutting out a little piece of the after deck for the purpose of bailing. There was not room for so many men around the hatches, and it was necessary to make some place for the men to bail. The hauling of the stern of the boat in towards the shore buried the bow and forced it further out into the river. She was braced with chains forward, and she went out as far as she could go for the chains.

Question. After the attempt to raise the boat by the shears, did you quit work on her, or did you continue to work on her?

Answer. We quit work on her. Shortly after we quit work McGinnis and McClelland went to Galveston. I went to Galveston also. All efforts, so far as I am aware, to raise the boat, ceased at that time. I went back to the boat again to assist in raising her. I do not recollect precisely how long after this I went back to her, but I think somewhere about three weeks. I went back to her in the employment of McGinnis and McClelland, and went to work in trying to raise the boat again. This attempt to raise her was made by shears, blocks, and falls. We succeeded in lifting her some, but sometimes the shears sunk in the mud, and sometimes a chain would snap. The river rose whilst we were at work at her. We had been at work about 13 days, when the river commenced to rise. I think they had sufficient purchases there to raise the boat. It is my opinion that we would have succeeded in raising the boat at this time if the water had not have risen. We had succeeded in starting the boat up, and had raised her two feet or more. I saw the capstern head rise out of the water. The water was rising pretty fast, and steamboats were beginning to run, which prevented us from working our purchase. Captain Bondies ordered the goods from the wreck to be removed from the bank of the river, on account of the rise of water. He ordered them to be removed to a bluff, which was a short distance below. At the second attempt to raise the boat some little goods were taken out of the wreck and taken ashore. A boat belonging to the steamer, [a yawl], and a sloopboat, there in the service of McGinnis and McClelland, and some men who were also in their employ, were occupied and used in the removal of the goods from the bank of the river to the bluff below. I assisted myself. When the river had raised so much that we had to quit work on the boat, McGinnis and McClelland went back to Galveston, as I also did. The men who went with McGinnis and McClelland from Galveston, to assist in this second attempt to raise the boat, were employed by them. I do not know who employed those who remained with the boat. I do not recollect how many men went up from Galveston with them. I went up to work on the boat again, afterwards.

I was in the employment all this time of McGinnis and McClelland. I think I went up something over four weeks after my return to Galveston. They took up other men with them. When they went to work on the boat again, they had a sufficiency of men, purchases, material to raise her. We found the boat, on our return to her, with her bow warped over—the stern was straight—the mud was some ten inches deep on deck—she was heavily laden with mud. We went to work and rigged purchases to raise her. It is my opinion that the boat could not be raised in the condition she then was in, with all her machinery, &c., on board. There was then too much mud in the hold, and too much weight on her. The cabin was first removed, and the boilers and engine as well as the doctor was taken off her. As we raised the boat some cargo was taken out. I stayed with the boat until her deck was above water, and was washed off. I had some fellons on my hands, and left before the boat was entirely up. I do not think the boat could possibly have been raised at this third attempt, without the removal of the cabin and machinery. When we commenced this third attempt to raise the boat, I think her stern was some seven or eight feet under water. She was tilted over, and on the outside guard I should say she was nine or ten feet under water. I was at the boat nearly one month at this last time.

Cross-examined.

I was hired by Captain Bondies at the first time. I worked between eleven and thirteen days. My time was charged from the time I left town until the time I got back. My wages were paid by Captain Bondies, through his clerk, Mr. Rohte. I do not know how many hands Captain Bondies had at this first attempt to raise the boat. The starboard side of the forward hatch was, at the time Mr. McGinnis and myself were trying to get the hatch on, about 3½ feet under water. There was no chain, that I was aware of, that obstructed the hatch on going down. I assisted in putting the canvas on over the hatch. I have every reason to believe that the canvas was nailed on, as I saw Mr. McGinnis go under the water with a hammer and nails. He had his armor on.

Question. Do you know, of your own knowledge, whether Mr. McGinnis was careful to so nail on that canvas as to exclude the water.

Answer. I examined the wreck after it was done, and found the canvas well turned in and nailed. Around the corners of the hatch a stauntion stood so close to the combings of the hatch that a hammer could not be used, and we stamped a sack of mud down between them. I cannot say that we succeeded in making it tight, we, however, did the best we could. The canvas used was a tolerably good new tarpaulin or cloth for a hatch. It was absolutely necessary to make the hatch tight to bail her out.

Question. Do you believe Mr. McGinnis made that hatch sufficiently tight to exclude the water?

Answer. That was impossible, one side of the hatch stood up two inches above the combings. A man who understood the thing, might have seen this tolerably plain. That the water could not have been entirely stopped in this way. One who did not, might not see it so plainly.

Question. After an unsuccessful attempt was made to bail the boat, was it discovered that the water came in the hatchway?

Answer. There was not much discovery about it, but it was blamed upon the hatchway.

Question. Can you say of your own knowledge that the water coming in at the hatchway was the difficulty?

Answer. I do not know.

Question. After this was blamed upon the hatch, was any new attempt made to make the hatch tight?

Answer. We tried to box the hatch around. I could not exactly say that we succeeded in making it tight in that way.

Question. Was there skill enough on that boat to make the hatch tight?

Answer. I believe there was, if there was any tight to be made of it.

Question. Does it require any great capacity to stop a hatch?

Answer. That would depend upon the condition the hatch was in. The hatch was in two pieces. The combings of the hatch were a few inches higher than the deck. I do not think the hatch projected over the combings of the hatch much. It might have done so to some extent in consequence of swelling. I believe the hatch was made to fit down inside the iron around the combings. I cannot say how much the hatch was swollen. I only know that it would not go down within about two inches. I cannot say what space was left open so as to let water in. It was a difficult matter for a man to examine it closely under water as it was, with a stiff current running. I served my time as a sailor. I sometimes work in a ship-yard, and in the winter I screw cotton. I have never had any experience before in raising steamboats. I reside in Galveston. I came to Galveston in 1851. On the second attempt to raise the boat I was hired by McGinnis. I have understood that McGinnis, McClelland, and Sherwood were partners. I did not hear it from them, however.

Question. At or about the time you were hired by McGinnis, did you understand from McGinnis that he, McClelland, and Sherwood had bought the boat, or that he had bought?

Answer. I cannot say that I have ever heard McGinnis say that he had bought the boat, or that he, Sherwood, and McClelland had bought her. I heard it talked about that they were about to buy her.

Question. At the time you were working on the boat at the second attempt to raise her, did you not hear McGinnis say that he had bought the boat, or words to that effect?

Answer. He did not say so to me. He did not let me know his business. At the second attempt to raise the boat McGinnis was to give me two and a half dollars per day. He also told me that if I would assist him in getting out the goods by giving him a spell with the submarine armor he would pay me extra. I cannot say how many days I worked at this time exactly, but I think about 13 days. We were also told that if we would get the boat up by the fourth or sixth day of July we should have half a dollar per day more. This was at the third attempt, and we worked night and day to do so. I cannot say how many nights I worked. I cannot say that I worked any whole night. I worked some nights until 9 o'clock. How many nights I worked until that time I cannot say. Perhaps 3 or 4. I overhauled blocks that wanted strapping, and made strappers: sometimes this was done on the boat and sometimes on the shore. The hands hardly ever knocked off work until it was so dark they could not see to work much more. I was at this last attempt to raise the boat in the employment of McGinnis about 23 days. A part of the time I was unfit to work on account of fellons on my hands. I followed a seafaring life from 1847 to 1856, or about 9 years. I am a native of Scotland.

Re-examined.

I have had some experience in raising sunken sail vessels, rigging purchases, and hoisting masts into vessels. I have worked some this last season in a ship-yard in hauling out vessels. I worked in the "Doctor Smith" and the "Betty Powell." The work spoken of by me as having been done, in my examination, in the Kate, was done in 1856. I think that if the hatch had been cut down according to the directions of Mr. McGinnis, it could have been made tight. I think that if the guard beams had not have been raised up, so as to let the water in, by the use of the shears, the boat could have been raised by bailing. In my opinion, everything was done that could be done, and in a proper manner, at the 2d and 3d attempts to raise the boat.

Question. When you went to work at the boat at the third time, did you hear Captain Bondies say that he had given over everything to McGinnis, or placed everything in his charge or under his control?

Answer. I heard him say so, or similar to that.

The above question and answer are objected to by Proctor for Claimant as a leading question.

THOMAS CORRIGAN.

Sworn to and subscribed before me this 26th day of March, 1857.

JOHN S. JONES,
U. S. Commissioner.

J. F. Brannon, sworn for libellants, testified: That he was engaged by libellants on the 22d of June last to help raise the Kate. I owned a sloop, which was loaded with shears, ropes, falls, men, &c. When we got there, Bondies came to the landing and a talk was had about taking off the cabin of the boat before raising her. Bondies took off McGinnis, and when McGinnis returned he said the boat was given up to him entirely by Bondies, to do as he pleased about the manner of raising her. We went to work, but could not raise her. We took off the cabin and commenced raising her, but tackle broke and let her down. About this time McClelland came up, and we took the machinery, boilers, &c. out. After great labor we raised her, and while we were getting the mud off the deck McGinnis and McClelland left for Galveston. We could not have raised the boat without taking off cabin, and taking out engines, machinery, &c. When McClelland and McGinnis left, it was understood that McClelland went to get out the Steamboat Betty Powell, and McGinnis to get funds to pay men, and that McGinnis would be back in a few days. They left us in the boat in their employ, and told us to work under the direction of Baxter in cleaning boat, getting the machinery on board, and goods to go down to Galveston. McGinnis came back in about six days. Eight men assisted who were hired by libellants. We were to have two dollars per day if the boat was not raised, and $2 50 if she was raised. After the return of McGinnis he had an interview with Bondies. The conversation evidenced a good deal of feeling. McGinnis said that in the third attempt to raise the boat he was not working under the old contract: to which Bondies replied, then you must not go on any further. After McGinnis went away, Bondies told us we could work if we looked to libellants for pay, but if we looked to the boat we must leave. We were in a starving condition, and we hired to Bondies at $2 00 per day. Witness, cross-examined, said: This was my first work in raising steamboats. I am a seaman by profession, and have seen many steamboats raised, and think I know how they should be raised.

(Libellants then read in evidence the deposition of Washington Stubbs.)

Deposition of Washington Stubbs.

Wash. Stubbs, sworn, says: That I reside in Liberty County, in the State of Texas; am 47 years old, and am a farmer and stock raiser. In live on Colton's Bayou. I knew the Steamboat Kate previous to her being libelled. I know the parties libellant. I was particularly acquainted with the fact of the sinking and raising of the Steamer Kate. I was employed by Captain Bondies, with my hands to help raise and discharge the said boat. I was at work with my hands in the woods and came across Captain Bondies, Mr. McGinnis, and Mr. McClelland, shortly after the said boat sunk, and to the best of my knowledge, before any attempt had been made to raise

her. I asked Captain Bondies if he wanted any help to raise his boat; to which he replied, he thought he had hands enough. But, at the same time, I was requested by the then Captain Bondies, McGinnis, and McClelland, to go up and look at the boat. The party started for the boat, and on the way Mr. McGinnis separated from us and went on up to the sunken boat in a small boat. On our arrival at the boat, we found Mr. McGinnis cutting a hole in the stern of the boat, for the purpose of getting buckets into her to bail her out, a proceeding then thought to be necessary, as I thought, by everybody. McGinnis reported the boat to be in a much better condition than he thought she was from Captain Bondies' report, and thought he could get her up in 24 hours, and wished to have my hands as soon as I could get them to the boat. I think I brought my hands on the next morning. I will not be positive, it might have been on the second morning after; and we went to work on the boat trying to get her up. Mr. McGinnis having a good deal of work to do in stopping up holes. We perhaps did not commence bailing the boat out until the next day after the arrival of my hands. We went to work bailing out the boat and succeeded in getting out one foot or one foot and a half, feet of water, but could get out no more. After having made one or two trials to raise the boat, Captain Bondies discharged my hands. I was not at work for him. I went up to the boat a few days after my hands were discharged, and the stern of the boat was then raised out of the water; the run was dry. What I mean is, that the stern was raised up. The keel was not out of the water. It was found that they could gain no more on her and gave it up, and requested me to come up with my hands, as I think the next day after or the day following that. They made their plan to raise shears, and raise the bow of the boat so as to bring her on an even keel, get all the hands they could from the country and make another trial to get the water out, which was done and failed. The cause of this failure in my opinion was, that the shears raised the guard beams up so that the water ran in faster than we could get it out. I was then discharged. The object in placing the shears forward was to assist in raising the bow of the boat, as the water was bailed out aft, so that the water would run aft. When I was discharged I left the boat. I was discharged by Captain Bondies. I was hired by him and by him I was paid. About the contract I know nothing—only some of the parties [that] told me that McGinnis and McClelland were to have five hundred dollars for superintending the raising of the boat, Captain Bondies furnishing hands and paying expenses. At the time the first attempt was made to raise the boat, it was my opinion that she was in a good condition to be raised. I have been at the raising of one other steamboat. The difficulty or cause preventing the raising of the boat was, that there were holes that let the water in faster than it could be got out. As to the question whether there was a sufficiency of power and the proper appliances to raise the boat I cannot an-

swer. When the last attempt was made I suppose there was. It was my opinion that the boat could have been raised with buckets and pumps. I think there was about five feet of water on the forward part of the main deck. The boat could have been raised with purchases.

[The whole of the foregoing deposition is objected to by the proctor for libellants, M. M. Potter, Esquire, on the ground that the testimony does not apply to the case as relating to matters between the parties to this cause, said objection being taken at the time the evidence was given.]

About twenty days or one month after I was last discharged as before stated, I went to said boat Kate, and found the same parties, Captain Bondies, McClelland, and McGinnis. I asked Captain Bondies if he wanted my hands again. He told me to go to McGinnis and see if he wanted me. A few days after this McGinnis hired my hands, and by the order of McGinnis I brought three hands to work. When I got there the boat was in strings, and I was told that her bows were some three or four feet from the bottom; but the Trinity was raising, and the boat could not be raised as fast as the river was raising, with the tackle which was there. On the next evening after they stopped work, the river still rapidly raising. On the next morning Captain Bondies requested me to take my hands and build a bridge across a little creek so as to haul the goods down to Mosse's Bluff to high land, he thinking the goods were in danger of the overflow. These goods were saved from the wreck of said steamboat Kate. McClelland then showed me his contract and gave it to me to read, at the time McGinnis came up to us, we then being at the bridge I was building; I read the contract. I cannot now state positively whose names were signed to said contract. The paper now shown to me is not, as I believe, the same paper I read. It does not seem to be in the same handwriting, but is, to the best of my recollection, in substance the same that I saw and read. Said paper here spoken of is annexed to libellants' libel, and purports to be a copy of said agreement. In the course of the conversation at the bridge, above spoken of, either McGinnis or McClelland remarked that as much had been done as could then be done; to which the other assented; and one of them, I think McGinnis, said Captain Bondies was getting sick of his bargain, and that if Bondies would pay them for what they had done, they would let him off. After the river went down I again went to said steamboat Kate, and found McGinnis and Captain Bondies there with a gang of hands. McGinnis then hired my hands again, and they went to work at raising the boat. McGinnis then told me he had the privilege of taking the whole of the upper works off the boat, and to take out the engines, so as to raise her; and accordingly he went to work and took the cabin off, and tried to raise her; but had not sufficient purchase to raise her with the weight then in her. He then took out the engines and boilers, and after one or more trials he got her up. I did

not think it necessary to take off the cabin. What I mean is, that I did not think it necessary to remove the after cabin to lighten the bows of the boat. I did not think it necessary to take the cabin off. The cabin was torn all to pieces, and the timber was badly injured. Carpenters could have taken it off without injuring it so much, and with less trouble, as I think.

Question. What remark did you make, and to whom did you make it, in relation to the manner of taking off the cabin?

Answer. I told Captain Bondies "that man McGinnis was trying to get into a quarrel with him." Such was my opinion. McClelland was not there at the time.

[This answer is also objected to by proctor for libellants.]

My reason for thinking that McGinnis was trying to provoke a quarrel was, that McGinnis went to work removing the light timber off the after part of said boat to lighten her bows, when there were heavy irons forward, and also because of the unnecessary destruction of property, as I thought. Captain Bondies did not interfere with him at all that I know of or saw during the time the boat was sunk. At the time of the foregoing conversation between myself and Captain Bondies, we went down the bank of the river together, when McGinnis was removing the brick work. Captain Bondies then asked McGinnis if it was his intention to take out the boilers, engines, and boiler deck?—to which McGinnis replied, "Yes; that he thought it best." Captain Bondies told McGinnis "that if he was working under the contract, to cut it off—I mean to stick to the contract, and I want you to close." McGinnis then stepped off the boat, and replied, "Well, yes; we will do the best we can." This is all I recollect of the conversation that took place at the time. McGinnis went in then and took out the machinery of the boat, and raised her.

Question by Proctor for Claimant. Was it practicable to have raised the steamboat Kate with proper tackle, without taking out her engines and machinery, and without taking off her cabins?

Answer. Yes. With tackle, almost anything can be raised; but no reasonable tackle could have raised the Kate as she then was, with all the mud in her. In the raising of the boat I do not think there was good management from the time the first lick was struck to the end. McGinnis had a chain fastened to the water wheel beam, which I did not at the time think sufficient to raise the boat—and it was not—for it came out, and injured the boat that much. I do not recollect hearing any conversation between McGinnis and Captain Bondies until McGinnis went to Galveston. McGinnis raised the boat, but he left for Galveston. When McGinnis was about leaving for Galveston, he wanted Captain Bondies to go down with him; Captain Bondies said that on account of some business he had to transact he could not then go down, but said he would meet him in Galveston, and would go down on the next day in the yawl boat—McGinnis then saying that he would be back in four days.

This is as nearly as I can now recollect; the conversation was a long one. At the time the last attempt was made to raise the boat, and after some few days' work had been done on her, McClelland came up to her and spent his time there, and was there when she was raised, and came down along with McGinnis. On the return of McGinnis from Galveston, Captain Bondies asked him what he was going to do? McGinnis replied that he thought it best to put all the goods on board the boat and bring them to Galveston, and then do the best they could. Captain Bondies then told McGinnis that he could not. McGinnis turning to me, said to me, "Take notice." Captain Bondies told him to stop, and let him finish what he was going to say before he interrupted him. Captain Bondies then went on to say that McGinnis could not put the boat or cargo to any further expense, or move the things, and that he would not give up the possession until McGinnis gave him some security for the fulfilment of the contract. McGinnis then said that he considered the contract as broke, and that he did not consider that he was at work under the contract when raising her the last time. At this Captain Bondies flew into a passion; I expected to see an affray. I cannot now recollect the words of Captain Bondies, but I understood him generally to say that McGinnis had nothing more to do with the matter. Such was the impression on my mind. I cannot now exactly enough recollect what was at the time said to state specifically what was said by Captain Bondies in reply. The parties then separated, and I walked down with Captain Bondies to his cabin. That night McGinnis left for Galveston, as I believe.

Cross-examined.

The whole of the matters of which I have before testified concerning took place in 1856. The first time I went up to the Kate, and saw McGinnis and McClelland at work, was the first effort made to raise her as far as I know. When in my direct examination I say, that McGinnis and McClelland were to have five hundred dollars for superintending the raising of the boat, I mean to be understood to say that Captain Bondies was to furnish hands, necessary materials, and pay the expenses. Such was my understanding from the parties. The shears spoken of as being used in the first attempt to raise the boat, were used and placed on the bows of the boat under the direction of Captain Bondies. I do not know that McGinnis and McClelland made any direct objection to the use of the shears, but they thought that the boat could be raised without them. The shears were placed forward, and the attempt to raise her with them was under the orders of Captain Bondies, and the manner in which the shears were used caused the turning up of the guard beams, and caused the boat to leak. All the purchases and power which they had to my knowledge, was used in attempting to raise the boat at this time. Some considerable cargo was at that time taken out. Buckets and pumps were also used in trying to raise the boat, and

the best use was made of them that could be done. I know McClelland is a ship-carpenter; I do not know whether McGinnis is or not. It was and is my impression that if Captain Bondies not not been present we would have raised the boat at this first attempt under the directions of McClelland and McGinnis. When all were bailing the boat, and had the stern raised as spoken of in my direct examination, Captain Bondies directed the lines to be hauled on to bring the stern of the boat further on the shore, which was done. I do not think the bow of the boat was thirty feet further down. Whilst we were bailing out the boat as above stated, Captain Bondies grumbled at the cutting of every hole in the deck, cut for the purpose of following the water up as it receded. The object in cutting holes in the deck was to bail and pump the water out. I deemed it necessary to cut holes in the deck in order to get at the water. At the time I in my direct examination speak of being discharged with my hands, first, the attempt to raise the boat was abandoned, and McGinnis and McClelland left; but Captain Bondies did not abandon the boat; Captain Bondies, however, left the boat, and went down to Galveston on the same boat with McGinnis and McClelland, as I believe. When I again returned to the boat, some twenty days after the abandonment of this first attempt to raise her, as stated in my direct examination, I found the boat in slings—that is, chains were placed under her, and a purchase was hooked in, and thereby the bows of the boat were raised from the bottom, as I was told, some three or four feet. McGinnis and McClelland were then there at work, attempting to raise the boat. When I arrived at the boat, the river was raising some four or five inches in twenty-four hours, as nearly as I can recollect. I and my hands were at this time hired by McGinnis and McClelland, and they discharged me because the river had raised so much that no more could be done towards raising the boat at that time. The river there was raising faster than we could raise the boat. It was at least twenty days or one month from the time I was discharged by McGinnis before I went back to the boat and found McGinnis and McClelland there, and had just commenced, or were about commencing to work on the boat again. The river had then gone down. McGinnis brought up with him some five or six hands. McGinnis hired other hands in the country besides my hands. The boat had at this time a great deal of sand or mud in her, and it now became a very difficult thing to raise the boat. McGinnis removed, I think, all the cabin, and threw it overboard; some of it was put into a flat-boat alongside, and the remainder was thrown overboard on the inside of the boat, where it was safe. At the time, or before this last attempt to raise the boat was commenced, I heard something of another or new contract from Captain Bondies, and a paper was shown to me by Captain Bondies, or his clerk, Mr. Rohte, which was drawn up by one of them, as I believed, but was not signed. I never saw said paper in the

hands of any other person than Captain Bondies, or his clerk, Mr. Rohte.

Question. Did the paper shown to you by Captain Bondies purport to be the draft of an agreement between Captain Bondies and libellants?

Answer. The said paper purported to be another or new agreement between the parties for the raising of the boat and cargo.

(The foregoing question and answer is objected to by proctor for claimant.)

Question. What were the terms of said draft of an agreement?

Answer. There was nothing different in this draft of an agreement from the contract, a copy of which is annexed to the libel in this cause, that I now remember, except that in this draft of an agreement Captain Bondies was to get $3,500, that is, $500 less than by the agreement above referred to; and the other parties (libellants) were to secure to him the payment of this $3,500. I am not certain that in the draft of an agreement above referred to anything was said about securing Captain Bondies in the payment to him. The paper was not signed when I saw it, nor do I know that it ever was signed. After the parties had quit work at the second attempt to raise the boat, and previous to the third commencement of work to raise the boat, Captain Bondies was at Galveston, at least I so understood from him.

Question. Did or did not Captain Bondies send you up to see McGinnis and McClelland, and to request them to come down to his camp, for the purpose of making a settlement about raising the boat?

Answer. No. Captain Bondies did send me up to see them, and to request them to come down and see him. I do not recollect that either of them refused to go. I think both of them went down with me. On our arrival at the camp of Captain Bondies I found him there.

Question. Did or did not Captain Bondies propose that libellants should pay him $3,000, and take the boat and cargo?

Answer. I think he did with conditions.

Question. Did or did not Captain Bondies propose to go to Galveston with libellants, and assist them in raising the three thousand dollars?

Answer. I do not believe he did. I did not hear him. I do not think I heard him make such a proposition to any of the libellants. I did not hear him make such a proposition in the presence of the libellants. Messrs. McGinnis and McClelland, one or both of them, went to Galveston, within a day or two after the boat was raised.

Question. Did not libellants, when they left for Galveston as above stated, leave the boat and cargo in the possession of men who were in their employ in raising her?

Answer. I don't know.

(The question and answer objected to by proctor for claimant.)

I think Mr. Charles Baxter was working for libellants in raising

the boat, and at the time she was raised. I do not know in whose possession the boat was left.

Question. Do you or do you not know whether Captain Bondies took possession of the boat and cargo shortly after libellants left for Galveston?

Answer. He did. I won't be positive whether it was the same day or the next; it was, however, within a day or two. I mean to say that Captain Bondies had possession within a day or two after libellants left for Galveston. On the third attempt to raise the boat McGinnis hired my hands of me, at one dollar per day, in the event that the attempt to raise the boat failed, and three dollars per day if successful in raising her. I had two hands at work for McGinnis.

Cross-examined.

I was paid by Captain Bondies for my hands.

Question. Now state the circumstances attending the payment of the money by Captain Bondies.

Answer. Captain Bondies asked me if he was responsible to me for my pay. I replied no; I was employed by McGinnis. Captain Bondies, however, told Mr. Rohte to pay me, and he did so.

(The above question and answer objected to by proctor for libellants.)

I made no application to McGinnis or McClelland for my pay.

Question. Why did you not first apply to libellants for your pay?

Answer. Because I did not want to, first on account of my friendship for the parties; next, they did not propose to pay me; and lastly, when I thought it was about time to be paid, I was paid by Captain Bondies.

Question. Do you know whether libellants paid the men hired by them up in that section of the country; and if so, when and how much?

Answer. I do not know.

Question. Whether to your knowledge Captain Bondies paid off the hands generally hired by libellants?

Answer. He paid the hands that were hired in the country.

(Question and answer objected to by proctor for libellants. Both question and answer.)

I think Captain Bondies paid me for the work of my hands within 2 or 3 days after the boat was raised. Captain Bondies had possession of the goods, and I understood of everything from the commencement, though I do not know that he ever relinquished or gave up the possession to any other person except as agent for him.

Question. Do you from your own knowledge know whether libellants had any other possession of the boat and cargo except than the bare privilege of working under the contracts?

Answer. I do not.

Question. You stated in your cross-examination on yesterday that it was by Captain Bondies' direction that the shears were placed to

raise the boat on the first attempt. Do you mean to convey any other meaning than that it was by his advice?

Answer. I mean to say that if it was advice it was very arbitrary.

Question. Did or did not Captain Bondies insist from about the time the shears were raised, that there was no other way except by applying force so as to raise the bow of the boat, to raise her?

Answer. He did. He did not think she could be raised in any other way.

Question. Did or did you not frequently hear Captain Bondies predict failure if they proceeded in any other way?

Answer. I did. (Question and answer objected to by Proctor for libellants.)

Question. When the shears were put up for the purpose of applying power to the bow of the boat, who did it?

Answer. Captain Bondies' men. I considered that McGinnis *bossed* the job, for the reason that all of us were in Captain Bondies' pay. McGinnis and McClelland *bossed* the job.

Question. Upon reflection, can you now state whether there was one ineffectual attempt to raise the boat by bailing, before the shears were put up or not?

Answer. There were two, and, I think, three attempts made before the shears were put up.

Question. At the time these attempts were being made to raise the boat by bailing, did not Captain Bondies insist that she could not be raised in that way?

Answer. After the second attempt he did. (The foregoing question and answer objected to by Proctor for libellants.)

Question. After the shears were put up and a chain put under the bow of the boat with a view to raise her bow, did Captain Bondies predict failure for the reason that the preparation was defective, and not sufficient?

Answer. I never heard him make any such prediction. (Question and answer objected to by Proctor for libellants.)

Question. Did you hear him complain that it was not fixed right?

Answer. I think he did; there was only one pair of shears or derrick outside, and I think that Captain Bondies thought a pair of shears or derrick ought to be inside also.

WASH. STUBBS.

Sworn to and subscribed before me this 18th March, 1857.

JOHN S. JONES,
U. S. Com'r.

The foregoing testimony was taken before me under the order of Court, and was sworn to and subscribed before me by the witness; and the same is returned to Court with consent of parties without any final certificate.

JOHN S. JONES,
U. S. Comm'r Dist. of Texas.

Charles Baxter, called as a witness for claimant, testified: That he was acquainted with the steamer Kate; that he was first mate of the boat at the time she sunk; that after the boat was sunk Captain Bondies came to Galveston and made a contract with libellants to raise the boat for $500, as I understood from all hands. McGinnis came up first, and said he could raise the boat in one day. McGinnis thought he could raise the boat by bailing. Bondies hired all the men he could, and they commenced by bailing. The boat raised considerable at the stern, but the bow did not raise. After a while we could not gain on her, and as quick as we stopped bailing the water came in and she settled down. We tried covering the hatch and bailing, but we could not raise her. Bondies and myself thought the boat could not be raised without putting a Spanish windlass to her bow. The cargo was stowed as boats usually are. She was loaded by the head. When the stern was raised I saw the boat was bent in the middle. I have had a good deal of experience in raising boats. I gave it as my opinion at the time that this boat could not be raised by bailing, and I am of the same opinion now. I heard Captain Bondies say to McGinnis that the boat could not be raised by bailing, but he did not give his opinion in an arbitrary manner. After two or three attempts to raise the boat by bailing, shears were used. I told McGinnis when we were rigging the shears, that unless the guard was cut away the chain would cut into it and break it up. McGinnis replied, that could be easily fixed again. The shears were rigged under the direction of McGinnis, and I assisted in putting them up. When the purchases were applied the guard broke up as I had predicted. I have not doubt but that with the proper appliances the boat at this time could have been easily raised with the machinery and all on board. I have *no* doubt of it. After this attempt to raise the boat was given over, a new contract to raise the boat was entered into between Bondies and libellants, Libellants came up to the boat with purchases, tackle and men, etc., and rigged purchases, shears, etc., and tried to raise her, but the water rose before they succeeded, and they left. At the first and second attempts I was working for Bondies. I said to several persons around that there were not sufficient purchases to raise the boat. McGinnis said he could raise her by pumping and bailing. When McGinnis left for Galveston the second time (at the time the water rose), the boat was left in slings and purchases. The purchases fell over into the water, and in order to save them I unrigged the falls and ropes, and took them out of the water and dried and stowed them away. This was necessary in order to save them, and when McGinnis came up the next time, and I told him what I had done, he seemed much gratified, and told me he was much obliged to me for it. The third attempt to raise the boat was about the 2d of July, and I engaged myself to McGinnis for $2.00 per day. The shears were mostly fallen down, but the middle shears were where we placed them. There were several attempts made to raise the boat, but

failed. At last she was got up after taking out the engines, machinery, &c. I worked on the boat from the first until she was raised. During the third attempt Captain Bondies came down once in 2 or 3 days to the boat. At one time, when they were taking off the cabin, Bondies said to McGinnis, if you are as smart in repairing boats as you are in knocking them to pieces, you will do well with the boat. McGinnis said he did not want any cabin on the boat for the trade he should put her in; that he intended to put her into the Brazos trade. Witness was inquired of whether he knew of McGinnis requesting permission to take away some of the cargo of the boat. Witness said, I knew some molasses was on board Hartney's boat, which McGinnis said he wanted to take to Galveston to raise money, but Bondies refused, and it was placed in his possession. After this the boat was raised. I was present when Bondies and libellants parted. McGinnis said he was going to Galveston to get funds to pay hands, and should be back in a few days. The night libellants left for Galveston I showed my bill for wages for 18½ days, and wanted pay. I was present when McGinnis came up the last time after the boat was raised, but I left and did not hear the conversation between them at that time. After the boat was raised, and at the time libellants left for Galveston I was ordered by libellants on leaving, to continue to work on the boat and clean her out and get her in order, and had 4 hands working with me. The boat remained at Morse's Bluff 30 days or over, and then the boat was in a very bad condition. Her seams were very open. I think the boat might have been taken to Galveston with her machinery and cargo on board. I think she might have been towed down and across the bay in a still time. After some thirty days and over, the freight and machinery, except boilers, and all the cargo then there was put on board the boat, and she was taken down to the mouth of the river, some 31 miles. The schooner Oregon took the freight to Galveston, which was there sold. After the boat was sold, the engines were cleaned and put in condition.

Witness Cross-examined.

There was nothing done on the machinery or hull of the boat until after she was sold. The boilers and engines are worth three thousand dollars. McGinnis and McClelland are ship carpenters. McClelland I have known following that business for several years. They kept a ship yard at Galveston. Witness said he had been a seafaring man for a good many years, nearly all his life. At one time, witness said, after he came to Galveston, being out of employment, he got him a horse and dray and followed draying a short time. After the boat was raised when libellants left, it was the understanding that the men working on the boat were working under my direction. The boat owed me at the time she sunk $270 or 280 dollars. After she sunk I worked on her and she owed me more. A good many dry goods were sold on the river that were taken out of the boat. They were sold by Captain Bondies to the amount of

Charles Baxter, called as a witness for claimant, testified: That he was acquainted with the steamer Kate; that he was first mate of the boat at the time she sunk; that after the boat was sunk Captain Bondies came to Galveston and made a contract with libellants to raise the boat for $500, as I understood from all hands. McGinnis came up first, and said he could raise the boat in one day. McGinnis thought he could raise the boat by bailing. Bondies hired all the men he could, and they commenced by bailing. The boat raised considerable at the stern, but the bow did not raise. After a while we could not gain on her, and as quick as we stopped bailing the water came in and she settled down. We tried covering the hatch and bailing, but we could not raise her. Bondies and myself thought the boat could not be raised without putting a Spanish windlass to her bow. The cargo was stowed as boats usually are. She was loaded by the head. When the stern was raised I saw the boat was bent in the middle. I have had a good deal of experience in raising boats. I gave it as my opinion at the time that this boat could not be raised by bailing, and I am of the same opinion now. I heard Captain Bondies say to McGinnis that the boat could not be raised by bailing, but he did not give his opinion in an arbitrary manner. After two or three attempts to raise the boat by bailing, shears were used. I told McGinnis when we were rigging the shears, that unless the guard was cut away the chain would cut into it and break it up. McGinnis replied, that could be easily fixed again. The shears were rigged under the direction of McGinnis, and I assisted in putting them up. When the purchases were applied the guard broke up as I had predicted. I have not doubt but that with the proper appliances the boat at this time could have been easily raised with the machinery and all on board. I have *no* doubt of it. After this attempt to raise the boat was given over, a new contract to raise the boat was entered into between Bondies and libellants, Libellants came up to the boat with purchases, tackle and men, etc., and rigged purchases, shears, etc., and tried to raise her, but the water rose before they succeeded, and they left. At the first and second attempts I was working for Bondies. I said to several persons around that there were not sufficient purchases to raise the boat. McGinnis said he could raise her by pumping and bailing. When McGinnis left for Galveston the second time (at the time the water rose), the boat was left in slings and purchases. The purchases fell over into the water, and in order to save them I unrigged the falls and ropes, and took them out of the water and dried and stowed them away. This was necessary in order to save them, and when McGinnis came up the next time, and I told him what I had done, he seemed much gratified, and told me he was much obliged to me for it. The third attempt to raise the boat was about the 2d of July, and I engaged myself to McGinnis for $2.00 per day. The shears were mostly fallen down, but the middle shears were where we placed them. There were several attempts made to raise the boat, but

failed. At last she was got up after taking out the engines, machinery, &c. I worked on the boat from the first until she was raised. During the third attempt Captain Bondies came down once in 2 or 3 days to the boat. At one time, when they were taking off the cabin, Bondies said to McGinnis, if you are as smart in repairing boats as you are in knocking them to pieces, you will do well with the boat. McGinnis said he did not want any cabin on the boat for the trade he should put her in; that he intended to put her into the Brazos trade. Witness was inquired of whether he knew of McGinnis requesting permission to take away some of the cargo of the boat. Witness said, I knew some molasses was on board Hartney's boat, which McGinnis said he wanted to take to Galveston to raise money, but Bondies refused, and it was placed in his possession. After this the boat was raised. I was present when Bondies and libellants parted. McGinnis said he was going to Galveston to get funds to pay hands, and should be back in a few days. The night libellants left for Galveston I showed my bill for wages for 18½ days, and wanted pay. I was present when McGinnis came up the last time after the boat was raised, but I left and did not hear the conversation between them at that time. After the boat was raised, and at the time libellants left for Galveston I was ordered by libellants on leaving, to continue to work on the boat and clean her out and get her in order, and had 4 hands working with me. The boat remained at Morse's Bluff 30 days or over, and then the boat was in a very bad condition. Her seams were very open. I think the boat might have been taken to Galveston with her machinery and cargo on board. I think she might have been towed down and across the bay in a still time. After some thirty days and over, the freight and machinery, except boilers, and all the cargo then there was put on board the boat, and she was taken down to the mouth of the river, some 31 miles. The schooner Oregon took the freight to Galveston, which was there sold. After the boat was sold, the engines were cleaned and put in condition.

Witness Cross-examined.

There was nothing done on the machinery or hull of the boat until after she was sold. The boilers and engines are worth three thousand dollars. McGinnis and McClelland are ship carpenters. McClelland I have known following that business for several years. They kept a ship yard at Galveston. Witness said he had been a seafaring man for a good many years, nearly all his life. At one time, witness said, after he came to Galveston, being out of employment, he got him a horse and dray and followed draying a short time. After the boat was raised when libellants left, it was the understanding that the men working on the boat were working under my direction. The boat owed me at the time she sunk $270 or 280 dollars. After she sunk I worked on her and she owed me more. A good many dry goods were sold on the river that were taken out of the boat. They were sold by Captain Bondies to the amount of

$1000, I should think, or more. Do not know the amount. Kept selling for two or three months to any one who wanted to buy. Captain Bondies' camp was the only safe place to keep the goods taken out of the boat. No person lived in a mile of it. I refused to make any statement to counsel for libellants about the matters now testified to by me before suit brought. When applied to for that purpose, my reply was that I could make my statement in Court if called in. That I did not wish it to appear that I had been officious for any one. Bondies was down at Galveston after the 2d attempt to raise the boat, and before the 3d attempt.

Witness re-examined by Claimant.

Captain Bondies had 3 hausers, 3 chains and blocks, which were used in raising the boat. McGinnis furnished 1 chain, 4 or 5 hausers, and several purchase blocks and lines. The chain furnished by McGinnis would not stand. The majority of the apparatus was furnished by McGinnis. My idea is that Bondies furnished one-quarter. The damage done to the portion furnished by libellants I should put at $250. And the damage done to that furnished by Bondies I should put at $150 to $175. Witness said he himself purchased goods of Captain Bondies. Miller sold a portion of the goods and Rohte sold a portion of them. Thought the goods sold well for damaged goods. The balance of the goods not sold up the river were taken to Galveston and sold. I did not hear anything said by McGinnis and McClelland about the arrangement for the sale of the goods or boat. I heard them say they could save themselves, that the boat and goods would pay them. McGinnis and McClelland were oftentimes present when the goods were being sold off. I never heard them raise any objection at the time the goods were being sold off up the river.

Witness further examined by Libellants.

The first cargo of goods sent to Galveston to be sold was between the first and second attempt to raise the boat. The large purchase blocks cost when new $90 or $100 a pair. Libellants took up 8 or 9 purchase blocks. Captain Bondies was not the owner of any of the chains used in raising the boat, neither did the boat own them; but I considered Captain Bondies responsible for all that he furnished. There were 4 or five hausers furnished by libellants that would cost, when new, $250 a piece. They were good hausers. One was cut in two. There was one new hauser which they took up. I think one was cut into. Some of the hausers furnished by libellants would not run in the blocks furnished by Bondies, being too large. A question as to the value of the machinery as thrown out on the bank having arisen during the argument, Baxter was called into Court and explained. That he intended to be understood that $3,000 was the value of the machinery when put in order and put together, and that it would cost $250 to put it in order, &c.

Daniel McCollum, sworn for claimant, testified that he was watchman on the steamer Kate. That he was present at the first attempt to raise her, that the attempt was made by bailing. Witness did not think that the boat could be raised by bailing. I expressed my opinion pretty freely on the subject at the time. I had no doubt of it, and told them they would not succeed. Captain Bondies thought the same. Baxter also. The boat was heavy and low forward, and the stern afloat, or partly so. The boat, when she raised some in the stern, seemed to be bent in the middle. Pretty badly bent as I observed in looking, and by the cabin ceiling in the centre. There were two or three attempts made by bailing. It was necessary to have purchases and shears near the bow, middle, and aft the wheel house. The boat might have been raised easily in the first instance, had the proper appliances been made, with the cabin on, and engines and machinery all in, no doubt of it. The second attempt the water rose, and libellants left the boat. At the third time, the boat was raised with purchases. The engines and machinery being taken out. They hitched to the water wheel beam. It tore up and damaged the craft. I told them the consequences, and it turned out as I said it would. McGinnis thought it would hold, and insisted on fastening to it. When the purchases were put on forward, they were put on without the proper supports back. The stern of the boat was hauled in to the shore, and had the boat with her stern laying or resting on the ground, been raised by purchases at the bow alone, it would have broken her in two. There never was a boat built that could lay with bow and stern on, and not break. The first attempt to raise the boat, should have been made with chains, under the fire bed. The boat could have been raised, in the first instance, for fifteen hundred dollars, and would have been worth $6000 or $7000. The reason she was not raised the first time, was owing to mismanagement. Witness said he did not think that the boat, with her engines and machinery aboard, could have been taken across the bay to Galveston. It would not have been safe. The least roughness would have sunk her. When she was lying in the river, after her goods were taken off, her seams were very open. It took two hands of us, six hours in the day, pumping, to keep her afloat. As she was lying there, when a steamboat passed her raising a little swell. She leaked very fast. She was in no condition to be towed to Galveston. She was warped down to the mouth of the river. I heard Captain Bondies propose to take some money off the contract. I don't remember how much. I heard McGinnis say, in reply to this proposal, that he would have to go to Galveston to get the security. I don't know what was done. I afterwards heard McGinnis say his contract was good enough as it was. When they were raising the boat the last time, she was so racked that I thought she was worthless. I told McGinnis so. I did not believe she ever could be made good for anything. McGinnis said he could run her bow against the bank, and make her tight. When the purchases were

put on without the proper supports back, she bent the other way about as much as she had previously bent in an opposite direction. Her seams must have opened badly. When they were taking off the cabin I heard McGinnis say that the cabin was needless for the purposes they wanted her—that they intended to fit her up for a Brazos boat, and that very little cabin would be wanted. Witness said Baxter was an experienced hand. Witness was inquired of what the boat, engines, and machinery were worth, after being raised—said—just what they would bring under the hammer.

Cross-examined.

Witness said that Captain Bondies between the second and third trial to raise the boat, sent him, witness, after a flat boat to take out machinery, &c., out of the steamboat, &c., which I sent up the river. The reason of the libellants quitting the second time was that the river rose so that they could not work.

The deposition of William F. Heeder taken before the chief justice of Nacogdoches County, and certified and returned was offered in evidence by claimant. The same was objected to by procters for libellants, and rejected by the court on the ground that the chief justice certified as the reason for not giving notice to the libellants' proctors, that it satisfactorily appeared to him, that they did not reside within one hundred miles of the place of taking the deposition—that instead of stating merely "that it satisfactorily appeared," he should have stated that they did not so reside within the 100 miles, &c. The counsel for claimant excepted to the ruling out the deposition by the court.

Deposition of William F. Heeder.

THE UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES,
For the District Court of Texas.

In Admiralty.

F. H. MERRIMAN, M. M. POTTER, for libellants; SHERWOOD and GODDARD, Proctors for Claimant—JAMES R. SHERWOOD, JOSEPH MCCLELLAND AND BARNEY MCGINNIS, of Galveston, Libellants,

vs.

The STEAMBOAT KATE, her tackle, apparel, furniture, etc., GEORGE BONDIES, Claimant.

On this tenth day of March, A. D. 1857, personally appeared before me, Bennett Blake, Chief Justice of the County Court in and for the County of Nacogdoches, in the State of Texas, Theodore F. Rhote, who being by me duly sworn, deposes and says that he is the agent of George Bondies, the claimant. That said cause is now pending in said District Court, that William F. Heeder, of Linwood,

in the County of Cherokee and State of Texas, is a material witness for said claimant, whose testimony is necessary in said case, and in the trial thereof as deponent is advised and believes, and deponent further says that neither the said James P. Sherwood, Joseph McClelland, and Barney McGinnis, nor the said F. H. Merriman and M. M. Potter, their said proctors, reside within 100 miles of the County of Nacogdoches in said State, where the examination of the said witness is expected to be taken.

THEODORE F. ROHTE.

Subscribed and sworn to before me this 10th day of March, 1857.

BENNETT BLAKE,
Chief Justice of Nacogdoches County.

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES,
For the District of Texas.

In Admiralty.

JAMES P. SHERWOOD, JOSEPH MCCLELLAND and BARNEY MCGINNIS, of Galveston, Libellants.

vs.

The STEAMBOAT KATE, her tackle, apparel, furniture, &c. GEORGE BONDIES, Claimant.

Let William F. Heeder, the witness named in the annexed affidavit, be examined *de bene esse* before me accordingly at the town of Nacogdoches, in the County of Nacogdoches, in the State of Texas, on the tenth day of March, A. D. 1857, at 3 o'clock in the afternoon. Dated this 10th day of March, A. D. 1857.

BENNETT BLAKE,
Chief Justice of Nacogdoches County.

UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES,
For the District of Texas.

In Admiralty.

JAMES P. SHERWOOD, JOSEPH MCCLELLAND, and BARNEY MCGINNIS, of Galveston, Libellants,

vs.

The STEAMBOAT KATE, her tackle, apparel, furniture, etc., GEORGE BONDIES, Claimant.

F. Merriman, M. M. Potter, Proctors for Libellants; Sherwood and Goddard, Proctors for Claimant.

Be it remembered, that by virtue of the acts of Congress, en-

titled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March the 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, I, Bennett Blake, Chief Justice of the County Court, in and for the County of Nacogdoches, in the State of Texas, residing near the town of Nacogdoches, in the State of Texas, and said District of Texas, duly commissioned and qualified, after having by order previously appointed the day for the examination, in accordance with said order, have this day caused to come before me, William F. Heeder, who is a resident of the town of Linwood, in the County of Cherokee, and State of Texas, a witness in the above entitled cause, to be examined on the application, and on the part and behalf of George Bondies, the claimant in said cause, now pending in the said United States Court, in and for the District of Texas. And I further certify that said witness, William F. Heeder, is a person of sound mind and lawful age; and that, after being by me first carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, he did depose and say: That he is twenty-eight years of age, that he resides in the town of Linwood, in the County of Cherokee, and State of Texas; that his trade and occupation is that of a merchant. That he was present in Galveston when Captain Bondies arrived from Moss Bluff, in the month of June, A. D. 1856. That he was present and heard several conversations between Captain Bondies and McGinnis, during which the former urged the latter to comply with a contract entered into on the twenty-fourth day of April, 1856, between Joseph McClelland, Barny McGinnis, and J. P. Sherwood of one part, and George Bondies, for the owners and underwriters of the wreck of steamer Kate, of the other part. And that Captain Bondies went to see McGinnis frequently, admonishing him to go up to the wreck of the boat with sufficient aid and means to raise the boat, and comply with the above mentioned contract. That McGinnis lost or delayed at least three weeks before he left, and he kept Captain Bondies waiting all that time. Furthermore, that Captain Bondies apprised McGinnis that by the latter's delaying, the wreck would get in a worse condition from day to day, and that he (McGinnis) was thereby injuring all parties interested in the wreck. Captain Bondies told McGinnis, in one of their conversations when he was present, that they (the parties) of the first part to the above mentioned contract, could not possibly (in the condition the wreck was then in) make anything by their contract; and Captain Bondies offered to deduct the sum of one thousand from the amount stipulated in the contract as the sum to be paid by them for the boat, provided they (McGinnis, McClelland and Sherwood) could give him good and

ample security for their contract in all other ways. Captain Bondies further stated to McGinnis that if their business was such that they could not go up the river immediately and they would abandon the contract, that he (Captain Bondies) would take the necessary boats, ropes, tackle, men, &c., and would raise the boat at his own risk. McGinnis stated it in reply, that he considered it certain to be able to make money by complying with the contract as written out, and he considered it an advantageous contract to their (McGinnis, McClelland and Sherwood) interest; and would not abandon it. Witness further states that he was also present at Moss Bluff, near the wreck of steamer Kate, when McGinnis and hands arrived there in the latter part of the month of June, A. D. 1856, and was present at several conversations between Captain Bondies and McGinnis, and that McGinnis and hands went to work for the purpose of raising the boat, in order to comply with their contract, which the witness had read frequently. Witness further states that some difficulty arose between McGinnis and Captain Bondies about removing the cabin, machinery, &c., and a proposition was made to change the contract. Witness wrote a new contract, only differing from the old one, making the sum to be paid by McGinnis & Co., to give security far the payment of the money—McGinnis & Co. being unable or unwilling to give the security. The new contract was not signed. McGinnis still expressed himself satisfied with the annexed contract, and went to work under the same, which contract is hereto attached marked *A*.

WM. F. HEEDER.

A.

This agreement, made and entered into this 24th day of April, 1856, by, and between Joseph McClelland, Barney McGinnis, and James P. Sherwood, all of the County of Galveston, in the State of Texas, of the first part, and George Bondies for the owners of the steamboat called the "Kate," and for the underwriters of the second part, witnesseth: Said party of the first part covenant and agree to and with said party of the second part, that said McClelland and McGinnis shall proceed with all possible despatch, accompanied by six competent and able bodied men, and all necessary vessels, boats, and apparatus usually used in raising sunken vessels, to where the said steamboat Kate is now lying sunk in the Trinity River, near Morse's Bluff, and upon their arrival at said point shall forthwith proceed to raise said steamboat and to secure and recover the cargo now laden in said boat, together with the tackle, apparel, furniture, and rigging belonging to said steamboat. Said party of the first part binds itself to start with the necessary apparatus, vessels, &c., to where the said steamboat is now lying sunk within the space of six days from the date of this agreement, and no later. And the said party of the first part further covenant, promise, and agree to and with

the said party of the second part, that they the said party of the first part will at their own proper cost and expense, pay and discharge all the expenses to be incurred in raising said vessel, and saving her cargo, whether their efforts to raise said boat and save her cargo be successful or not, and that no part of said expenses to be incurred shall be chargeable against said steamboat or her owners, nor against her cargo or underwriters, or against any other person or persons interested therein. And the said party of the first part further covenant, promise, and agree to and with the said party of the second part, that in their efforts to raise the said boat and cargo, and to save her cargo, they will not unnecessarily injure said boat, nor destroy any part of her cargo, nor will they remove her machinery or cabins, or any other fixtures, rigging or apparel belonging thereto, damages sustained to the present time, and unavoidable accidents alone excepted. It is furthermore agreed between the parties mentioned, that said party of the first part obligate themselves to accomplish the raising of said steamboat and the saving of her cargo within the space of fourteen days from the day of their arrival at the place where the said steamboat is now lying sunk, provided only that they are not hindered to accomplish the same by high water or overflow. It is furthermore agreed between the parties that the said party of the first part, after having succeeded to raise said steamboat, and to save her cargo, shall proceed with all possible and advisable speed to the port of Galveston, and the said party of the second part covenants and agrees to and with the said party of the first part, that if within thirty days after the arrival of said boat and cargo at Galveston, they the said party of the first part pay, or cause to be paid to him, the said party of the second part, the sum of four thousand dollars in cash; and shall further pay all the expenses incurred by said party of the second part, from the time said steamboat sunk to the date hereof, and also pay all expenses incurred in raising said boat, and securing her cargo, and bringing said boat and cargo to Galveston, then and in that event the said party of the second part will convey by good and absolute bill of sale and conveyance, unto the said party of the first part, the said steamboat Kate, free from the claim or claims of all persons, and will also subrogate said party of the first part to all his claims for salvage against the cargo thus saved, and already saved, and all other benefits to accrue to him the said party of the second part for his services in saving or causing to be saved the cargo aforesaid. It is further agreed between the parties to these presents that the legal possession of said steamboat and her cargo is not to pass out of the possession of said party of the second part, but that he reserves and retains full and complete possession thereof until the payment of the sum herein stipulated to be paid for said boat and cargo be fully paid by said party of the first part. For the faithful observance and performance of all and singular the covenants and agreements

herein contained, the parties hereto subscribe their names and affix their seals, using scrolls in lieu of seals, this day and date first herein written.

JOSEPH McCLELLAND, [SEAL.]
BARNEY McGINNIS, [SEAL.]
JAMES P. SHERWOOD, [SEAL.]
GEORGE BONDIES. [SEAL.]

In presence of
E. NIEBOUR,
C. S. BEISSNER.

Whereas Barned McGinnis, for himself, and James P. Sherwood, and Joseph McClelland, all three being the first party of the first part of the foregoing agreement, declares that they cannot comply with their part of the mentioned agreement, he, the said Barned McGinnis, for himself, and for Joseph McClelland and James P. Sherwood, hereby acknowledges that they have no more claims whatsoever against the party of the second part of the above agreement for any services heretofore rendered, and expenses incurred by them in their previous attempts to raise the said steamer Kate, and to save her cargo.

LIBERTY COUNTY, MOSS'S BLUFF, *this the 26th day of June, A. D.* 1856.

And I, the said chief justice of the County Court of Nacogdoches County as aforesaid, do further certify that the causes or reasons for taking said depositions are that the testimony of said witness was material and necessary, on the trial of said cause, and that said witness resided more than one hundred miles from Galveston, in the State of Texas, the place of holding the Court for the trial of said cause. And I also certify that no notice was given or served on the libellants or their attorneys, for the reason that it satisfactorily appeared that neither said libellants, nor their proctors or attorneys, resided within one hundred miles of said place of taking said deposition. And I further certify that said deposition was reduced to writing by said witness, William F. Heeder, in my presence; that after being so reduced to writing it was carefully read over to said witness, after which he subscribed the same as his sworn testimony, to be used in the said cause and on the trial thereof. And I further certify that I am not of counsel or attorney to either of the parties in the suit, nor in any way interested in the event of said suit. And further, that I have retained said deposition in my possession for the purpose of sealing and directing the same with my own hand, and forwarding to the Court where said cause is pending for trial.

In testimony whereof, I have hereunto set my hand, caused to be affixed the seal of the County Court of Nacogdoches County, this the tenth day of March, A. D. 1857.

[SEAL.] BENNETT BLAKE,
Chief Justice of Nacogdoches County.

Theodore F. Rohte was offered as a witness on the part of claimant, and objected to on the ground of interest. The witness and claimants produced mutual releases, the execution of which were admitted by libellant's counsel. Said releases were filed, and are as follows:—

Release.

UNITED STATES DISTRICT COURT,
District of Texas.

In Admiralty.

JAMES P. SHERWOOD and others,
v.
THE STEAMER KATE, her tackle, apparel, &c., GEORGE BONDIES, Claimant.

Whereas I have heretofore released and abandoned all my right, title, and interest in the steamboat Kate, her tackle, apparel, and furniture, engines and machinery, to George Bondies, the claimant in this suit, now therefore be it known, by these presents, that for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, released, abandoned, relinquished, and do by these presents assign, transfer, abandon, and relinquish, unto said George Bondies, all the interest I have or ever had in said steamboat Kate, her tackle, apparel, engines, furniture and machinery, together with all other rights I have directly or indirectly in the above suit, or in any matter growing out of the same, to him, said George Bondies, his heirs and assigns, forever.

In witness whereof I have hereto set my hand and seal, this 15th day of May, A. D. 1857.

THEODORE F. ROHTE.

Witness, EBN. ALLEN,
L. SHERWOOD.

Release.

UNITED STATES DISTRICT COURT,
District of Texas.

In Admiralty.

JAMES P. SHERWOOD and others, Libellants,
v.
THE STEAMBOAT KATE, her tackle, apparel, &c., GEORGE BONDIES, Claimant.

Whereas Theodore H. Rohte has heretofore relinquished, abandoned, released, and assigned to me all the right, title, or interest held and possessed by him in the Steamboat Kate, her tackle, apparel, and furniture, engines, and machinery, together with all his

404

rights and interest, if any he has, in the above suit, and whereas the said Rohte is expected to be offered by me as a witness in said cause: Now, therefore, be it known, that for and in consideration of one dollar to me in hand paid by said Rohte, the receipt of which is hereby acknowledged, I have released said Rohte from all liability to me in consequence of anything growing out of the above suit or the subject matter thereof, directly or indirectly, and for a good and valuable consideration I do hereby agree to indemnify, and save harmless, and to keep harmless and indemnified said Rohte from all damages, costs, or liabilities in the above suit, or the subject matter thereof, or any matter growing out of the same directly or indirectly, and also his heirs and assigns forever. In witness whereof I have hereto set my hand and seal this 15th day of May, A. D. 1857.

GEORGE BONDIES,

Witnesses, EBN. ALLEN,
S. SHERWOOD.

After which said witness was sworn, and testified as follows: That he was first clerk on the Steamer Kate. I was clerk, and had charge of the cargo at the time the boat was being raised. After libellants entered into the second contract, the one attached to the libel, it was agreed and understood between libellants and Bondies that I should be clerk. I heard McGinnis say he was willing to accept my account keeping. Witness said that the account marked Exhibit B, and attached to the claim and answer, purporting to be expenses incurred by claimant to the time of the sale of the boat and cargo, amounting to $5535 27, was correct. That the charges and wages for captain and other officers or hands, and the board charged, were the customary charges allowed by insurers and underwriters. Witness also testified that the account marked Exhibit C, and attached to the answer, was a correct statement of the proceeds of the sales of the boat and cargo so far as they had been received. That there was in addition $500 in the hands of Mr. Ufford, the auctioneer, a balance of the proceeds of sales which had not been paid over, in consequence, as he understood, of libellants' notice of claim for salvage. Witness also testified that the account marked Exhibit D, to the amount of $2,320, purporting to be the expenses paid and incurred by claimant on the steamboat, machinery, &c., after his purchase, was a correct account of said expenditures. [The last account, marked Exhibit D, was objected to by libellants as improper to be given in evidence. His honor decided to reject it from the consideration of the Court, to which claimant excepted.] Witness testified further that he was not on the boat when she sunk. That he went up to the boat with McGinnis and Captain Bondies the first time they went up to raise her. Witness was up on the Bluff all or nearly all the time they were at work raising or trying to raise her. In answer to inquiry whether the proper management was resorted to in raising the boat, witness said he had no experience in that

business and declined stating. Witness said that the hands up the country hired by libellants were paid by witness by order of Captain Bondies. Some of them were not willing to work for libellants without Bondies would become security. I think Captain Bondies paid all the hands hired in the country. The libellants never made any objection to the sales of the goods. I know they assented to some of the sales. Libellants bought some few articles of the goods. They knew of the sales of the goods going on, and I took it that it was the understanding of all parties that the goods should be sold off. Libellants knew of goods having been sent down to Galveston for sale. I think the goods all sold well. Those sold in the country I think sold rather better than those brought to Galveston. Mr. Ufford was the auctioneer who sold the goods, boat, and machinery, &c., at Galveston. The boat, engines, and machinery, and the balance of the cargo, were sold by Mr. Ufford at auction on the 15th of September. Captain Bondies bid off the boat, engines, and machinery at $610. That was the highest bid for them. The hands who worked in raising the boat were boarded out of the proceeds of the sales and boat's provisions mostly. The boat had $600 at the time she sunk, which was used up in the expenses of raising her. Captain Bondies ran in debt. I could not say how much, nor can I now state particularly the items he obtained on credit. I was present when the second contract was entered into. When it was executed the libellants were fully apprised of the condition and situation of the boat, and one of them said they could give good security for the performance of the contract. It was understood at the time the second contract was entered into that libellants should give security for the performance or payment of the whole $4000. They mentioned that Mr. Davie would be security. When Mr. Davie was applied to, he said, Show me the paper first, and when the contract was shown to him he refused. Witness said he was at the boat at the time libellants arrived to commence work under the second contract, and it was understood by all persons that they worked under that contract. Libellants represented that they had a good job. I never heard any hard words between libellants and Captain Bondies. I never heard libellants during all the time they were at work declare or intimate that the contract was abandoned, or that they did not work under it. After libellants went up on the third attempt to raise the boat, and before they commenced work, on the third attempt to raise the boat, it was proposed by Captain Bondies to reduce the contract, or take $500 off the contract for the benefit of libellants. McGinnis said it was very kind in Captain Bondies to throw off the $500. The proposal was made on the condition that libellants should give security. I drew up a contract, and Mr. Heeder also drew up one, which was similar in substance. They were neither of them executed, because McGinnis would not sign and give the security, and went on under the old contract. The boat was not then raised, and was in a very bad condition. As to

the value of the engines and machinery when taken out, I do not know that I could state it. But if I were to buy, I would not have been willing to give over $700 for it. The hull of the boat, as it was raised, I should give it as my opinion was not worth over five hundred dollars. The hull of the boat could not be made a steamer again. The cash value of the engines, boilers, and all the machinery, with all the expenses and repairs upon them, might perhaps be sold for $2000. I am not a judge of their value, and could not state what they would sell for at auction. About $1800 dollars worth of goods in all were sold by E. S. Ufferd.

Witness cross-examined, said there was some of the goods sold by Mr. Miller, second clerk of the boat, when I was not present. I think he must have sold five hundred dollars worth or more. Miller gave an account of his sales, and the items are embraced in the account attached to claim and answer. I saw a part of the goods sold at auction by Ufferd on the first sale. Amount of first sale as shown in account. I was not present when the boat and furniture was sold. I think E. S. Ufferd had in his hands about $500 from the last sales. He refused to pay over the money for the reason as he said, he had been notified by libellants not to pay over the money to Bondies, as they claimed salvage on goods sold. At the last attempt to raise the boat, the libellants cooked their provisions. They had rather a poor table. Bondies and myself did not take our meals with them. Witness said he thought the contract which he drew up proposing to take $500 off the old contract was still in existence among the papers. Counsel for libellants requested that the contract as drawn up by witness might be produced, whereupon it was produced by counsel for claimant. The contract having been identified by witness, the same being in his hand writing, it was read in evidence by libellants' counsel, and was as follows:—

Unexecuted contract.

LIBERTY COUNTY,
State of Texas, Moss' Bluff.

Whereas, on the 24th day of April, A. D. 1856, there was a certain contract or agreement made and entered into, by and between Joseph McClelland, Barned McGinnis, and James P. Sherwood, all of the County of Galveston of the first part, and George Bondies, agent for the owners and underwriters of the steamer called the Kate, of the second part; the said agreement bound and compelled the party of the first part to raise the said steamboat Kate, and save her cargo. Now Barned McGinnis for himself and for Joseph McClelland, and James P. Sherwood, declares, that it is out of his power to raise said steamboat and save her cargo, according to the terms of said agreement. Therefore it is agreed and covenanted in this the 26th day of June, A. D. 1856, by and between Barned McGinnis for himself, and for Joseph McClelland and James P.

Sherwood of the first part, and George Bondies for the owners and underwriters of the steamboat Kate of the second part, witnesseth: Said party of the first part covenants and agrees to and with the said party of the second part, that he, the said Barned McGinnis, will make one more effort and attempt to raise said boat and save her cargo in strict accordance with the terms and conditions set forth in the agreement above referred to. The said party of the first part further covenants and agrees with the said party of the second part, that if he should fail to raise said steamboat, that he will not abandon said boat until he has taken out the engines, machinery, and boilers, and placed them in a flat boat now lying alongside the wreck of said steamboat, and to save as much of her cargo still remaining in said steamboat as is possible; and it is further agreed by the party of the first part that he will not make any charge, or set up any claim against the party of the second part, for any services rendered by himself, or any men in his employment in getting up said engines, machinery, boilers and cargo. And the said party of the second part further covenants, promises, and agrees, to and with the party of the first part, that if the party of the first part does succeed to raise said steamboat in accordance with the terms and specifications set forth in the agreement above referred to, that he will deduct the sum of five hundred dollars from the amount specified in the agreement above referred to. This is a supplementary agreement to the above referred to and original agreement.

For the faithful observance and performance of the covenants and agreements herein contained, the parties hereto subscribe their names and affix their seals, using scrolls in lieu of seals, this day and year herein written.

In presence of

Claimant's counsel then read in evidence the deposition of David E. Connor, as follows:—

Deposition of David E. Connor.

SHERWOOD and Others
v.
STEAMBOAT KATE.

David E. Conner sworn, says, that he resides in the city of Galveston. I was first engineer of the steamboat Kate at the time she sunk. She sunk just above Moss' Bluff. She sunk about this time last year. When she sunk she lay with bow up stream, with the stern closer to the bank than the bow. The bow was deeper in the water than the stern. She was about 130 feet long. I think the forecastle deck was about 4½ feet under water. There was no water on the deck at the stern. The fantail was cut. The boat had a full cargo on board at the time she sunk, and was on a voyage up the river, and sunk in consequence of being snagged. I continued on with the boat after she sunk, I think about a week. I went down

the river and met Captain Bondies and McGinnis as they were going up. This was the first attempt to raise her. I was at the boat when McGinnis first examined the boat and her position with a view to raise her. McGinnis said that he did not find the boat in as bad a condition as he had thought.

Question. Was there or was there not a difference of opinion between Captain Bondies and McGinnis as to the proper mode of raising the boat?

Answer. I did not hear anything said about it until an attempt had been made to raise the boat. I afterwards heard Captain Bondies say she could not be raised unless her head was first raised, but to whom he said it I do not know.

(The foregoing question and answer thereto objected to by proctor for libellants.)

The first attempt to raise the boat was made by bailing her out.

Question. After the first attempt to raise the boat, and the failure thereof, what did Captain Bondies recommend to be done?

Answer. I heard him say that there ought to be shears or some purchase rigged, so as to raise her head and keep it up.

Question. Was his advice at that time followed?

Answer. No.

Question. What was done?

Answer. A pipe was stopped and they tried to bail her out again.

Question. In these two attempts at bailing, how far did they succeed in raising her stern?

Answer. The stern was raised to about her 2½ foot mark.

Question. How much did the boat draw when light?

Answer. I do not know exactly; between 30 inches and 3 feet. I never noticed her when light.

Question. In this process of bailing did you notice whether her bow was at all raised?

Answer. No, sir; the bow went down. I intend to say that the bow went deeper as the stern was raised.

Question. In your opinion was it or not practicable to raise the boat by bailing in the manner in which McGinnis was proceeding?

Answer. I cannot say. I think the boat would have raised, if the water could have been got out. I do not think the boat could be raised, or they would have done it at the time.

Question. Please state whether in these two attempts at bailing out of the boat, they had an abundance of help?

Answer. I could not tell. They had a good many men. More men could have worked.

Question. How many holes were cut through the deck for the purpose of bailing, that you saw?

Answer. I think three or four; I am not sure which.

Question. State whether Captain Bondies did or did not state that it would be of no use to cut holes through the deck, unless they had

some purchase to raise the bow; it would be only cutting up the deck for nothing?

Answer. I heard him say that there would be no more use in cutting any more holes through the deck. I do not recollect that he at that time spoke of a purchase to raise the bow. He spoke of that previously.

Question. At what time in the day did they give over the second attempt to raise the boat by bailing?

Answer. In the evening, about 4 or 5 o'clock.

Question. How long did you stay there after that?

Answer. I left the next morning.

Question. Can you state of your own knowledge anything that transpired in relation to the raising of the boat after that?

Answer. No; I cannot. They spoke of getting shears, but had not got any when I left—not that I saw.

(The whole of the foregoing testimony, questions, and answers, are objected to by proctor for libellants.)

Question. Did Captain Bondies meddle or interfere with the persons who were raising the boat?

Answer. He spoke to them about cutting holes in the deck.

Question. Was or was not the keel of the boat resting on the bottom?

Ans. I cannot say. She was not afloat. The stern was afloat at one time whilst they were bailing. What I mean to say is, that when she sunk she went down to the bottom.

Question. After the stern of the boat was raised by bailing, did not Captain Bondies call the hands away to save freight?

Answer. No, sir; not till after they had given up bailing, and not then that I noticed.

Question. Was you present during all the time they were attempting to raise the boat by bailing?

Answer. No.

Question. Where were you when absent from the boat?

Answer. I was after hands.

D. E. CONNER.

I certify that the foregoing twenty pages contains all the evidence given in this cause.

(Signed) JOHN C. WATROUS.

And afterwards, to wit, on the sixth day of June, of the same year, an appeal was taken to the Supreme Court of the United States by the claimant in said cause, in the words and figures following, to wit:—

Appeal.

DISTRICT COURT OF THE UNITED STATES,
Eastern District of Texas.

In Admiralty.

GEORGE BONDIES, Owner and Claimant of the STEAMBOAT KATE, her tackle, &c., Appellant,
vs.
JAMES P. SHERWOOD, BARNEY MCGINNIS, and JOSEPH MCCLELLAND, Libellants.

To the Honorable the Supreme Court of the United States, the appeal of the above named appellant respectfully showeth :—

That on or about the 15th day of November, A. D. 1856, the above named libellants exhibited their libel in the District Court of the United States for the District of Texas, against the appellant, and the Steamboat Kate, her tackle, apparel, engines, and machinery, and cargo, and proceeds of the sale thereof, praying that said boat and proceeds, and cargo, &c., might be condemned to pay demands of libellants set up in said libel, and costs of suit; and also praying for a personal decree against said appellant. That process having been issued out of this Court, and served on said appellant, and the said steamboat, her tackle, &c., this appellant did on or about the 3d day of January, A. D. 1857, file his claim and answer in said cause in said District Court, praying to recover in reconvention certain damages alleged to have been sustained on account of certain breaches of the contract or contracts under which the pretended salvage service mentioned in the libel, was performed. The said answer also praying that the said claim for salvage might be dismissed with costs in that behalf, as by reference to said libel and said answer may more fully appear. That said cause came on to be heard before the Hon. John C. Watrous, Judge of the said District Court, on or about the 25th day of May, A. D. 1857, upon the depositions and proofs taken in said cause, and the depositions adduced and taken by the respective parties, on the trial and hearing thereof, and the said Judge having advised therein on the 1st day of June, 1857, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that said libellants should recover the sum of two thousand five hundred and seventy-five dollars, adjudged against the said boat, her tackle, apparel, engines, and machinery, for salvage service, and against said George Bondies, as owner thereof, together with the costs of suit; and further decreed the sale of said steamboat, her tackle, &c., for the satisfaction of said decree, and in case of a deficiency in the amount of said sales to satisfy said decree and costs, the balance to be collected of said appellant personally. And this appellant is advised that said decree is enormous, inasmuch as the said libellants were not entitled to any salvage in the premises, but on the contrary this apellant was entitled to recover the full

amount of damages in re-convention, and alleged in the answer to have been sustained by appellant, and proved on the trial, together with costs. And this appellant, for these and other reasons, appeals from the whole of said decree, in favor of libellants, to the next term of the Supreme Court of the United States; and on the said appeal they intend to have the cause heard anew on the same pleadings and proofs, together with the proofs offered by appellant, in the said District Court, and excluded by the Hon. District Judge. And appellant prays that said decree in favor of libellants, and every part of it, may be reversed, with costs. That the claimant may have the said damages in re-convention awarded to him which were prayed for in his answer, and proved at the trial and hearing, and for such other decrees to be thereupon made, as to the said Supreme Court shall appear just, and that said appellees be condemned to pay to this appellant his costs and charges in the premises. And this appellant prays that the record and proceedings may be returned to said Supreme Court, and that the said decree may be reversed, as such other decree shall be therein made as to said Supreme Court shall seem just, and that the appellees may be condemned to pay the appellant his costs and damages in the premises.

SHERWOOD & GODDARD,
Proctors.

L. SHERWOOD,
Advocate.

We hereby admit due service of a copy of the foregoing paper.

M. M. POTTER,
F. H. MERRIMAN,
Proctors for Libellants.

And afterwards, to wit, on the same day and year, an appeal bond was filed in said cause, which is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, George Bondies as principal and Charles L. Beissner, Julius Kauffman and John H. Illies as sureties, are held and firmly bound unto James P. Sherwood, Barney McGinnis, and Joseph McClelland in the sum of five thousand five hundred dollars, to be paid to said obligees, their heirs, executors, administrators or assigns, and to which payment well and truly to be made we bind ourselves, and each of our heirs, executors and administrators jointly and severally firmly by these presents, sealed with our seals, and dated this 4th day of June, A. D. 1857.

The condition of this obligation is such that whereas in a suit in the District Court of the United States for the District of Texas, in admiralty, wherein the above named obligees were Libellants, against the steamboat Kate, her tackle, apparel and furniture, engines and

machinery and owners, and wherein the above bounded George Bondies is claimant, a decree has been rendered by the said court against said steamboat, her tackle, &c., for the sum of two thousand five hundred and seventy-five dollars, and costs of suit in favor of said Libellants; and the said George Bondies, conceiving himself aggrieved by such decree or judgment, has appealed from the same to the Supreme Court of the United States. Now, therefore, if the said decree shall be affirmed, and the said George Bondies shall well and truly pay such amount as shall be awarded on such affirmance, and shall in all things abide by the order, direction, and decree of the said Supreme Court on such appeal, and all orders, directions, and executions that may be issued by said Supreme Court to the court below or otherwise, then the foregoing bond and obligation to be void, otherwise to remain in full force and virtue.

GEORGE BONDIES, [SEAL.]
Residing at Nacogdoches, Texas.

C. S. BEISSNER, [SEAL.]
Residing at Galveston, Texas.

JNO. H. ILLIES, [SEAL.]
Residing at Galveston, Texas.

J. KAUFFMAN, [SEAL.]
Residing at Galveston, Texas.

Signed, sealed and delivered in presence of
LORENZO SHERWOOD,
of Galveston.

THEODORE F. ROHTE,
of Nacogdoches.

I approve of the form of the above bond, and manner of execution, and also the sureties to the same, the amount of the bond having been fixed by the Court.

JOHN C. WATROUS,
U. S. Judge.

THE UNITED STATES OF AMERICA,
Eastern District of Texas.

I, James Love, Clerk of the District Court of the United States for the Eastern District of Texas, certify that the foregoing one hundred and twenty-one pages, exclusive of the Index, contain a true and perfect transcript of the record and all the proceedings in the cause in admiralty of James P. Sherwood and others, against the steamboat Kate, her tackle, &c., George Bondies, claimant. In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of Galveston, this twenty-third day of June, A. D. 1857.

[SEAL.] JAMES LOVE,
Clerk.